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RESEARCH

Person Centred Planning within the NDIS

Current Limitations—Prospective Opportunities

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BaxterLawley



The Independent Centre for Applied Not-for-Profit Research

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Executive Summary

The National Disability Insurance Scheme (NDIS) has been a universally accepted initiative. It represents a very significant policy in terms of numbers of people prospectively impacted (about 460,000 at full roll out), in terms of complexity, and in terms of the cost (the current funding envelope is set at \$22 billion). Adding to this complexity, the roll out of the scheme is intended to be implemented over a relatively brief period ending in 2020 so that the risk related to the establishment of the NDIS is increased as a result.

Because a central tenet of the scheme is for participants (service users) to have choice and control over the services they receive, Person Centred Planning (PCP) is a core element of the NDIS. Every person deemed eligible for support is intended to have a plan that outlines the goals to be achieved, defines the “reasonable and necessary” supports to which they are entitled and which are funded by the NDIS, together with the total amount of funding allocated to spend on those supports. The PCP is then implemented by the participant’s preferred provider.

Notwithstanding their considerable experience and capacity, the National Disability Insurance Agency (NDIA) prevents service providers undertaking the planning process and so most plans are completed by NDIA personnel. There is concern that providers might focus on developing plans that are more financially rewarding or more aligned with their service provision systems than aligned with the goals of the participant. The NDIA is also seen to have a potential conflict in that scheme sustainability is central to that agency’s responsibility and the PCP process is one way the NDIA can maintain control of costs because the plan sets out the funded services amongst other things.

However, significant concerns have been raised with respect to the PCP process suggesting that, because of the sheer size of the scheme and the shortage of appropriately qualified and experienced NDIA planners, amongst other things, the process results in: (1) poor quality plans being developed; (2) delays in services being provided; and (3) for participant health and welfare to be put at risk. It is also an expensive process with \$1.76 billion being allocated to this process for the roll out period and an ongoing cost of between \$900 million and \$1 billion being the ongoing expected annual cost. These costs are increased when plans need to be rectified.

This report results from a project examining the anecdotal concerns raised by all stakeholders involved in the service provision process—NDIA, peak bodies and service providers—via semi-structured interviews and evidence evaluation processes. The project considered the evidence and put to stakeholders three alternate options that could be used to support the PCP process: (1) the status quo; (2) a risk-based proportionate response allowing for both provider and NDIA planning activities but focused on ensuring regulatory resources were applied where the level of risk warranted them; and (3) a model including providers as planners for all situations and with the NDIA providing assurance over the plans developed.

We identified that there is support for the development of a risk-based approach to the planning process (i.e. option 2) so that service providers can assist in planning where appropriate and so that the NDIS only applies its scarce resources to supervise, regulate and/or plan where appropriate in order to reduce the average cost of a plan. Such a strategy is likely to mitigate the perceived problems associated with conflict of interest or bias, increase the quality and timeliness of plans and reduce the costs of the PCP process to the NDIA. Indeed, potentially, costs may be reduced to the NDIS by around \$400 million, which can be applied to service delivery.

Background

The National Disability Insurance Scheme (NDIS) was established jointly by Commonwealth, state and territory governments in 2013 to provide individualised support for people with disability, their families and carers. It was created following the publication of a Productivity Commission report¹ published in 2011 that found, among other things, that more funding should be made available for the supports required by people living with disability, that there were many people living with disability who were not being supported, that the level of supports provided varied from state to state making transferability more difficult, and that those people requiring supports needed more choice and control over what supports they are provided, how they are provided and when. Further, the Productivity Commission posited that the scheme should be developed based on insurance principles.

Overall, the objective of the NDIS is to address the chronic unmet need of a group of people who have been under-supported for decades.

It is an almost universally supported policy but the implementation process is very challenging to participants, providers of disability services and government agencies, including the NDIA.

The NDIS has been almost universally accepted and represents a very significant policy initiative in terms of numbers of people prospectively impacted (about 460,000² at full roll out, consisting of the transfer into the scheme of 280,000 people currently accessing disability support services plus a further 180,000 new participants), in terms of complexity, and in terms of the cost which is currently projected to be around \$22 billion. As such, this is one of the most complex and difficult social policy initiatives implemented in Australia for many decades.

Originally commenced in four trial sites in July 2013, the NDIS is currently being rolled out across Australia. The original trial sites included the Hunter Valley in New South Wales, the Barwon district in Victoria, the state of South Australia but only for all children under six years of age, and the state of Tasmania for 15 to 24-year-olds. Subsequently, the NDIS commenced in two trial sites in Western Australia in July 2014, in the Barkly region of the Northern Territory in 2014, and in Queensland in January 2017. Each jurisdiction has its own rollout schedule with the full rollout of the NDIS scheduled to be completed by June 2020. Approximately 460,000 people living with disability are due to become participants in the scheme by full roll out.³ To achieve its targets, the NDIA must recruit 10,000 new participants to the scheme per month during 2016/17. This number increases to over 16,000 per month during the 2017/18 financial year.

The NDIS seeks to provide all Australians with a permanent and significant disability, aged under 65 years, with the reasonable and necessary supports they require in order to live an ordinary life. The initiative is intended to support people living with disability to participate in all of life's experience, particularly in relation to increasing their social and economic participation. This objective is intended to promote long term, positive change so that an emphasis is also placed on upfront investment in therapy and other supports with the intention that early intervention results in longer term positive outcomes for the participant and community, as well as eventual savings for the scheme.

¹ Productivity Commission Review – NDIS Costs. <http://www.pc.gov.au/inquiries/current/ndis-costs>

² NDIS Operational Guidelines: www.ndis.gov.au/operational-guideline/overview

³ NDIS Operational Guidelines: www.ndis.gov.au/operational-guideline/overview

Person Centred Planning

A central tenet of the scheme is that people accessing disability services should have choice and control, giving people with disability the capacity to decide what services they want, who should provide those services and when, within the context of what are termed “reasonable and necessary” supports.⁴ To achieve this outcome, a planning process is entered into for every participant which has come to be termed Person Centred Planning (PCP) and it is a core element of the NDIS. Every person deemed eligible for support under the NDIS will have a plan that outlines the goals to be achieved, defines the “reasonable and necessary” supports to which they are entitled and the total amount of funding (dollars) allocated to spend on these supports.

The quality and utility of these plans will have a major impact on the extent to which the NDIS meets its policy objectives. Collectively, these plans must facilitate access and equity of service for participants, describe the participant’s goals and supports to be funded, and maximise the efficiency and effectiveness of government funding.

The first plan developed for each participant is particularly important. Although plans can and will be adjusted, the first plan will set at least an informal benchmark for the scope and amount of supports to be provided. In addition to ensuring the participant’s goals are met, it is essential for the National Disability Insurance Agency (NDIA)⁵ to ensure that the scope and value of participants’ first plans meet the requirements of the legislation and, when aggregated, fall within the total budget allocated to the scheme. Under- or over-specifying plans will have on-going consequences, not least in regard to the additional time and resources required from participants, providers and the NDIA to adjust and then readjust plans.

The first plan is a critical element in the establishment of a set of funded services—a package—that will support a participant into the future. It creates an informal base line from which future packages will be constructed.

However, the initial planning process is also an expensive one—in time and money—due to the lack of participant experience with the NDIS and lack of planning capacity within the NDIA structure.

These costs impact the timing of service delivery and its sustainability for providers and participants alike.

As such, the PCP has a key role in managing the costs of the NDIS which was noted in the Productivity Commission’s National Disability Insurance Scheme (NDIS) Costs Issues Paper released in February this year.⁶ Inter alia, the paper states that:

“The quantity of supports received by participants is another key driver of costs. These are driven by the planning process. Robust planning processes and assessment tools, and sufficiently skilled and impartial planners, are therefore important for the ongoing financial sustainability of the scheme”.

Implementing a scheme of this size and complexity, and within the planned tight timeframe, presents enormous challenges. One of these is the lack of experience in the buying of services within a consumer directed model exhibited by people with disability and their friends and family. Under many of the previous state-based, block-funded support arrangements, people living with disability and/or their families or carers had little or no

⁴ The definition of ‘reasonable and necessary’ can also be a contentious issue impacting planning. However, the issue is beyond the scope of this paper except in the context of plan quality which is discussed further below.

⁵ The NDIA is the Commonwealth government agency designated to establish and operate the NDIS.

⁶ Productivity Commission. National Disability Insurance Scheme (NDIS) Costs. Issues Paper. February 2017. <http://www.pc.gov.au/inquiries/current/ndis-costs/issues/ndis-costs-issues.pdf>

choice regarding services or providers, and therefore have no experience of choice and control. For the NDIS to work well and for people with disability to exercise their power, participants⁷ must have knowledge of services available and experience of building the package of services that maximises their total value or utility within their resource allocation. Most scheme participants and their families/carers will develop these skills in time, but few are likely to have these at the outset. Furthermore, NDIS participants must also develop additional knowledge and skills in navigating the NDIS, which is for all intents and purposes a new national government funding rationing system that is itself still evolving, as are many of the linkages between the NDIS and other relevant state- and Commonwealth-funded programs. No matter how well the NDIS is supported and resourced, transitioning 460,000 people into the scheme of this kind is a complex and risky undertaking. Given the place of planning in this process, the planning process is a critical element in getting the roll out as close to right as possible. However, there are a number of components relevant here.

Planners

Planners provide support to people with disability in creating their PCP. Generally, it was expected that all planners would be employees of the NDIA. However, as the rollout process has developed and challenges as to capacity have been realised, planners external to the NDIA, including those employed by Not-for-profit organisations, have undertaken planning processes.

Importantly, planners cannot be service providers. The intention of separating the planners from the service providers being to ensure that the interests of the planners relate to achieving the development of a PCP that meets the participant's needs and that the plan's development is not impacted by the interests or bias of the provider. Such impacts are discussed further below, however, there is concern that providers may be tempted to drive the creation of a PCP so that they maximise their income from the services to be provided and/or to ensure services included in the PCP meet the provider's operational needs.

The current arrangement, where most plans are undertaken by NDIA personnel, can also be said to be created within the context of the NDIA's interests which include maintaining the cost of the scheme at a level that is sustainable given the funding. Thus there is also a danger that the NDIA planners will have scheme cost at the forefront of their minds rather than the participant's goals. These matters are dealt with in more detail below.

Local Area Co-ordinators

To facilitate the development of plans, the NDIA has established teams of Local Area Coordinators (LACs) across Australia. LACs help participants to understand the scheme and to create their first plan, including by determining the reasonable and necessary supports to be provided together with the total funding that will be made available. Generally, funding is made available via the development of a "package" of services which meet the plan. LACs also assist participants to identify and procure services.

To fulfil their role well, LACs must have a deep knowledge of the broad range of needs of people living with disability, of the supports that will be packaged for funding under the NDIS and the availability of services and potential service providers within the participant's community.

The recruitment and training of sufficient numbers of adequately experienced LACs has proved challenging for the NDIA and there have been anecdotal reports of participants not

⁷ The NDIS refers to people with disability accessing services under the NDIS as participants.

being satisfied with the process or the outcome of planning.⁸ In many cases, in order to meet demand, planning is being done by telephone rather than via a face-to-face meeting,⁹ leaving some participants feeling that their planner has no real understanding of their needs. Additionally, risk of bias or conflict of interest applies equally to the LACs who may also place the scheme sustainability ahead of participants' interests.

The role of existing service providers in supporting transition

There has been considerable comment across the disability sector about the role that existing service providers could or should have in supporting the development of plans for participants entering the NDIS. While the NDIS will result in hundreds of thousands of Australian's living with disability having access to services for the first time, many people, particularly those with severe or profound disability have been receiving services from service providers for many years or even decades. These providers include state government agencies and specialist independent Not-for-profit (NFP) or For-profit providers. Further, many of these state/territory-based services have also been conducted in the context of quality assurance frameworks so that the work has been subject to quality review.

The majority of disability service providers were in existence prior to the establishment of the NDIS. They were involved in planning, responding to need and supporting thousands of people living with disability. Additionally, many have had very long and ongoing relationships with the people they serve. Indeed, sometimes, the service provider knows the person with disability best of all—they have become “supporter of last resort” due to lack of family or other support provision. This does not mean that some participants won't want to change providers or that current arrangements are entirely satisfactory. It does mean, though, that service providers have significant experience and capacity in planning for and delivering services, capacity that can contribute to the planning process positively.

Many of these organisations are experts in their field, working closely with academic and other advisors to develop world-class practices to support people with disability to lead better lives. As such, in this transition-phase of the NDIS, providers are often the most knowledgeable with respect to the services available in support of participants and how those services might best be delivered. Indeed, anecdotally, they can be better informed than many LACs and, because of their long-term roles, can even be more aware than participants and their families of the services available and the structure of the disability sector.

However, under the NDIS, providers are excluded from participating in the development of PCPs due to the potential for a perceived conflict of interest or bias. In most cases, this exclusion extends to not being permitted to provide information to planners on the current services provided or to provide an opinion on what could be best for the participant based on their experience, including when a provider has already worked closely with a client for an extended period.

Many service providers see a plan for the first time when it is complete and they have reported that they are frustrated that many plans are being developed by inexperienced LACs, that these plans will not achieve the individual goals of the participant, may place the participant at risk in terms of clinical or more general welfare outcomes, and/or are unsustainable in terms of the resources provided. Amongst other things, this outcome

⁸ National Disability Insurance Scheme rollout plagued with problems, FOI documents reveal. <http://www.abc.net.au/news/2017-03-12/ndis-rollout-plagued-with-problems-foi-documents-reveal/8346892>
ABC News Report. March 2 2017. <http://www.abc.net.au/news/2017-03-03/ndis-enrolments-surgings-despite-difficulties-accessing-plans/8321232>

⁹ 2016b, NDIS Fact Sheet — Developing Your First NDIS Plan, Geelong.

requires service providers and participants to have the plan reviewed—adding time and cost to the planning process and increasing the frustration of participants.

There is also concern that the current planning process is overly prescribed, complex and resource intensive for simpler plans or lower value packages. At present, the approach to planning is effectively ‘one size fits all’ rather than proportionate to the complexity and/or costs of services resulting in a mismatch between planning resources likely over-allocated to simpler planning requirements and an under-resourcing of planning processes designed to meet significant care needs of people living with profound disability.

It can be posited that the use of NDIA personnel for the planning process also increases the administrative costs associated with the scheme, removing much needed resources from the funding pool available to support service delivery.

This Report

The Independent Centre for Not-for-Profit Research (ICANR) identified that the planning processes associated with the NDIS were a cause for concern as a result of anecdotal feedback. As such, this project is designed to examine the current approach to Person Centred Planning (PCP) and to identify alternative methods for developing plans that would improve outcomes for participants within the NDIS. This project was undertaken by BaxterLawley on behalf of ICANR.

In undertaking this project, it has been necessary to expand the investigation and analysis from simply addressing the role of service providers to addressing the broader question of what constitutes good planning and to consider the cost of planning and associated risks.

As such, this project considered the following issues:

- the quality of the PCP;
- who should support participants to develop the PCP;
- the timeliness of completing the PCP, particularly for new participants;
- the frequency of reviewing the PCP;
- the volume of PCPs to be completed to fully rollout the NDIS;
- the scalability of the PCP process to meet the timelines of the rollout
- the cost (including opportunity cost) of completing PCPs under the current arrangements; and
- the role of service providers in the planning process.

The role and function of PCP has been commented on by a number of sector commentators, researchers, the NDIA and other government agencies, and such commentary was reviewed as part of this project. Resources accessed have been footnoted throughout the paper. Additionally, PCPs will also be examined by the Productivity Commission review titled ‘National Disability Insurance Scheme (NDIS) Costs’. The Productivity Commission will release an issues paper in June 2017 and expect to report in September 2017.

Investigation Approach

This project was implemented using an ethnographic approach consisting of semi-structured interviews designed to gain insights into an issue from the perspective of providers, advocacy organisations and system regulators.¹⁰

The following activities were undertaken:

1. Review of relevant documentation, including NDIS Legislation, NDIS trial processes, procedures for PCP in the NDIS, review of planning processes in state and territory disability systems, public sector service delivery, the NDIA Quarterly reports and regulatory literature (see bibliography and footnotes);
2. Review of risk-based policy implementation processes in public sector administration;
3. Initial interviews with disability sector stakeholders to scope the issues related to the PCP process within the NDIA trial sites;
4. Development of semi-structured interview guide, including the development of alternative, risk-based planning models for feedback;
5. Conducting semi-structured interviews with respected disability sector stakeholders. BaxterLawley prepared an interview guide and undertook fact-to-face or telephone interviews with 11 senior leaders representing providers, peak organisations, advocates and NDIS administrators. The interviews gathered focused, qualitative data that provided contextual information regarding PCP within the structure of the NDIS. This methodology allowed BaxterLawley to gain specific insights (factors and variables) to understand relationships and causal variables surrounding the role of person centred planning in the NDIS; and
6. Analysis of data received, development and amendment of structural options for planning processes designed to provide options for PCP within a framework that considers cost, choice and control, and efficiency.

In undertaking this project, we are cognisant that the investigation has been limited to including the views and opinions from key industry and NDIA personnel. These respondents were active in implementing the NDIS, have daily interactions with people living with disability and their carers and families, and detailed knowledge of the development of PCPs, but they do not themselves have PCPs.

It is important to acknowledge that the investigation process did not include interviews or other data collection processes designed to identify the opinions or responses of people living with disability. From a practical perspective, it was not possible to achieve the feedback of a representative sample of people living with disability relating to the issue of planning. As such, while there is always the danger that planning processes can result in less than ideal outcomes if the service provider has a formal and significant role in the planning process, we also know that, anecdotally, the current situation is also a frustrating one for people living with disability, their families and carers

¹⁰ Design Research Techniques. <http://designresearchtechniques.com/casestudies/semi-structured-interviews/>

The current approach to Person Centred Planning

Eligible people, termed participants, are provided a plan of supports which is intended to be developed and tailored to their individual needs. A plan could include informal supports that a person receives through family, friends, disability service providers or other community services. If required, the NDIS will also fund reasonable and necessary core supports that help participants achieve their goals.

The importance of Person Centred Plans

Within the service delivery architecture of the NDIS, the PCP is a major component that enables important objects and principles of the legislation to be realised. As such, it has been a main focus for comment from many stakeholders.

For example, the evaluation of the WA NDIS Trials Evaluation Report¹¹ stated that:

“...plan quality was confirmed in the surveys, interviews and observations to be closely correlated to the outcomes for people with disability, their families and carers. Whilst a good plan improves the likelihood, it is not a guarantee of a good outcome for a participant. Conversely, a poor plan causes negative impacts on participants, their families, providers and agency operations. Thus plan quality is regarded as a strong indicator of a good participant outcome”.

The PCP process has an important role in maintaining the financial sustainability of the NDIS. The NDIA has three main mechanisms for controlling total costs which are intertwined with the planning process:

- **Eligibility:** The NDIS sets criteria which determines who is eligible for participation in the scheme and therefore the total numbers receiving funding. Eligibility is determined prior to the commencement of the PCP process. The 180,000 new participants will take more time and cost to process during the roll out than the planning processes associated with the 280,000 current participants who are already identified as eligible because new participants have to be determined as eligible before proceeding to a planning process.
- **Determination of Reasonable and Necessary Supports:** The PCP process assesses what are reasonable and necessary supports which determines what has to be funded by the NDIA; and
- **The NDIS Price List:** The PCP establishes the types and mix of services which are then funded in accordance with the NDIA's price list as it may be set by the NDIA from time to time.

In summary, the PCP process is central to the success of the NDIS but also reflects the tensions within the objects of the NDIS Legislation. These issues are summarised in Table 1. The PCP is intended to provide a mechanism to allow participants greater choice and control, but correspondingly constrains this through the need to manage costs. It is the point at which the aspirational objects of the NDIS can be realised—better integration into the community, innovative solutions and ‘actuarial’ guided decision making; yet the costs of doing it well, both financially and through the need to structurally ‘separate’ planners from providers, deprives it of potential resources and the expertise of experienced disability sector workers.

¹¹ Western Australian NDIS Evaluation Report: Stanton's 2017. Executive Summary Page 8.

Table 1 The role of the PCP process in achieving the aims of the NDIS

| Object/principal of the NDIS Legislation | Relationship to PCPs |
|---|---|
| Social and economic participation | PCP's provide the blueprint for each participant to maximise their social and economic participation in the community. |
| Choice and control | The process of developing the PCP provides the opportunity for participants to exercise choice and control. |
| High quality and innovative supports. | The quality of the PCP determines the suitability of supports, the amount of support and enables innovation. |
| Reasonable and necessary provisions | The support required is directly related to the participant's disability, The support is effective, beneficial, current good practice, based on good evidence and will provide value for money. The support is not something a customer or family would normally be expected to provide for themselves, nor a service that would normally be provided by another government agency. |
| Financial sustainability of the scheme | Defining entitlement through the PCP process allows the NDIA to control costs to ensure the financial viability of the scheme. Minimising costs allocated to the PCP process maximises the budget that is able to be expended on supports for participants. |
| Implementing the actuarial nature of the scheme? | To effect the actuarial nature of the NDIS, investments in supports that reduce future expenditure need to be made during the life course of participants. This would be effected through the planning process, including regular reviews. |

Eligibility for support under NDIS

Eligibility, while not a key focus of this report, is a critical control allowing the NDIA to ensure its scarce resources are directed to those that most need them. To provide context for assessing planning, it is important for readers to be aware of the eligibility criteria and that the decision regarding eligibility is made prior to the commencement of the planning phase.

The following are the criteria for eligibility to receive funding through NDIS:

- They must be less than 65 years old on initial request;
- They must also be an Australian citizen, a permanent resident of Australia or New Zealand;¹²
- Their disability must manifest as one or more of intellectual, cognitive, neurological, sensory, psychiatric and/or physical disability;
- Their disability must be, or is likely to be, permanent; and

¹² Protected Special Category Visa, subclass 444

- Their disability substantially reduces the participant's ability to take part in daily activities such as communication, learning, self-care, mobility, social interactions or to perform these tasks and actions.¹³

The current planning process

For those identified as eligible, individualised funding is intended to provide each participant with the opportunity to direct their own service provision, within the reasonable-needs based financial budget assessed by the NDIA. Therefore, the planning process is critical and, from the participant's perspective, the following are the key approaches to and stages of the planning process:

- The development of the PCP should be led by the participant to ensure the participant has as much choice and control as possible in terms of identifying their current and life goals, the supports required and how they are provided. The PCP will include elements of supports that might be provided by family, friends, or other informal relationships.
- The PCP process can also include service providers at the discretion of the participant but they have no right to be there.
- The PCP can also include funds for one-off items for specialised equipment if required as well as elements designed to build the longer-term capacity of the participant that may or may not be funded.
- The PCP is then approved and funded by the NDIS. Such funding will be formulated based on the key support requirements identified in the PCP which are mapped to a list of funded items on the NDIA's price list.
- Once the PCP is created and confirmed, the participant can then select a service provider(s) to provide those supports included in the PCP that are to be purchased.
- The participant then accesses ongoing services in accordance with their PCP. The service provider invoices the NDIS directly, and the NDIS amends the participant's remaining funds balance accordingly.
- The plan is then to be reviewed annually by the LAC in consultation with the participant.

Resourcing the planning process

The planning process is resource intensive. It is estimated that the cost to the NDIA of the PCP process within current policy settings during the rollout of the NDIS will be in the order of \$1.76 billion over the next four years (8% of the total NDIS allocation of \$22 billion annually) and once rolled out, the planning process is expected to cost approximately \$900 million to \$1.0 billion per annum. These estimates do not include any costs to providers which can also be significant, including in relation to the analysis of the plan, the rectification of any plan quality issues and the implementation of the plan after activation by the NDIA. Additional costs incurred can relate to the provision of services by providers while any defective elements in a plan are being rectified and before the plan is activated such that providers cannot be reimbursed for the services they provide on a timely basis. If at all.

¹³ National Disability Insurance Act, 2013, Sections 22 - 24

The planning process is also critical in terms of services being provided to participants. The plan must be activated by the NDIA before the provider can raise an invoice for services provided. This can be a significant issue for participants who are in need of support but for whom a plan is yet to be activated—many service providers provide services in support of the participants needs but may not be recompensed for a considerable time after providing the service. As such, the financial sustainability of providers may be threatened during extended planning processes.

These figures are only estimates as the overall cost of the planning process is dependent on the following factors:

- The ratio of planners to participants;
- The amount of time allocated to the first planning process, initially an average of twelve hours was allocated, subsequently reduced to six hours. A proportion of planning is currently undertaken by phone, reducing the time taken accordingly but impacting the quality of the plan;
- The availability of appropriately qualified and experienced planners which impacts the quality of the plan as the relative complexity of service requirements increase. Poor quality plans result in delays in service delivery and increases in costs to the NDIA and providers;
- Whether eligibility has been previously established or is under active assessment and consideration;
- The availability of planners in remote and regional centres, where cost increases may be incurred as a result of inefficient planning processes and the need to fund travel costs;
- The amount of time allocated for the annual review process;
- The age of the person and complexity of issues presented by the participant;
- Whether there are a number of other organisations and government agencies involved, which would increase coordination times and costs.

Currently, limited funding is available to service providers in support of the PCP implementation process. The funding is called an establishment fee which currently sits at a maximum of \$500 as a one-off payment. However, there are some significant limitations to the ability of the provider to claim under this payment.¹⁴

Components of a plan

The PCP outlines the environmental and personal context of the participant, along with the specific support/s which will be provided to, or funded for, the participant in order to enable them to effectively move towards their personal goals, objectives and aspirations.

A plan should include informal, mainstream and community supports, as well as supports funded by the NDIS (the

It is especially critical to get the initial PCP right as it forms the basis of the support provided to participants and sets the scene for the longer term.

¹⁴ These limitations include that the participant must be a new participant with identified needs of 20 hours per week or more for assistance with daily life and/or increased social community participation support. Where a provider has a new participant, the provider can charge up to \$500 if the participant is new to the scheme and up to \$250 if the participant is new to the scheme but not new to the provider. Where the participant changes providers and there are sufficient funds left in the package, the new provider can charge up to \$250 for the PCP implementation process.

reasonable and necessary supports). The NDIA states that a participant's plan must also include:

- a participant's statement of goals and aspirations prepared by the participant that specifies:
 - the goals, objectives and aspirations of the participant;
 - the environmental and personal context of the participant's life , including the participant's current living arrangements;
 - informal supports and other community supports;
 - actions to increase social and economic participation;
- a statement of participant supports, prepared with the participant and approved by the NDIA, that specifies:
 - the general supports (if any) that will be provided to, or in relation to, the participant;
 - the reasonable and necessary core supports (if any) that will be funded under the NDIS¹⁵.
 - Any equipment requirements that will support and increase the participant's level of social and/or economic participation.

The statement of participant supports must include a statement which specifies the date by which, or the circumstances in which, the NDIA must review the plan. Generally speaking, the NDIA will ensure that plans have a minimum duration of 12 months, and will specify a plan review date of between four to six weeks before the end of the participant's plan. This may be modified if there is a significant change in the participant's circumstances (e.g. significant injury or death of a primary carer).

Why are service providers excluded from the planning process?

The PCP is currently developed by a planner including input by an LAC with the participant and either without input from existing or potential service providers, or with limited input. This arrangement is intended to ensure disability service providers do not have undue influence over the content of the plan as these organisations are seen to have a conflict of interest or potential for bias in that they may seek to moderate the plan in order to support their operational and strategic priorities rather than the priorities of the participant. That is, they are seen to have a pecuniary and operational interest in the supports that flow from the PCP that is being developed.

Within the trial sites, LACs have supported participants, their families and carers to complete the PCP. Across Australia LACs have been either employed directly by the NDIA/state government agencies or the function has been contracted to third parties (e.g. Non-Government Organisations). However, the involvement of NDIA personnel in the planning process also constitutes a conflict of interest or bias given the NDIA's focus on scheme sustainability—the creation of the price list, the recognition of eligibility, the determination of what constitutes reasonable and necessary supports, and the PCP process all represent points of cost control where decisions made will impact the financial sustainability of the NDIA. The NDIA planning process can be biased toward the interests of the NDIA.

¹⁵ NDIS Operational Guidelines. Australian Department of Human Services <https://www.ndis.gov.au/operational-guideline/overview>

While findings are dealt with in the next section, the interviewees all acknowledged that there were inherent conflicts (and connotations) of interest in this process. They recognised too that service providers can also be the closest natural supports for many participants. Indeed, for some participants, their current service provider knows them best and understands their needs better than anyone else, indeed, the provider may also be the participant's guardian. Overall, in relation to this issue, all agreed that the prospective conflicts needed to be recognised and managed, in the same way that these issues had been inherent in previous funding systems. The policy focus then, should be on the acknowledgment and recognition of these interests and safeguarding against any prospective negative impacts within a risk-based policy model.

Findings & Discussion

This section summarises the views that were raised consistently by interviewees regarding the development of PCPs. For clarity, we have separated the issues raised, but stakeholders noted that many issues overlap—for example factors related to the quality of the PCPs were connected to those related to the skills, qualifications and experience of the person doing the planning.

The quality of PCPs

Interviewees agreed that the PCP development process is critically important to achieving the best possible plan which then becomes the basis for achieving outcomes for each participant. They discussed the role of plans in defining the type of supports required to best meet the needs of participants, the quantum of supports provided, as well as the goals of individuals living with disability. They see PCPs as the foundation for all input and services provided to the participant.

However, the interviewees identified that, currently, the quality of PCPs is inconsistent, and described many as being of poor quality. Specifically, they reported the following issues:

- The clinical and health care needs of an individual are not always adequately described or catered for, increasing clinical risk and the welfare of participants;
- The objectives of the individual may not be adequately described and catered for;
- The plans were not always practical in terms of implementation;
- The timing of the plan and delays in its commencement may negatively impact opportunities for early intervention and/or delay supports where participants are in crisis;
- There have been a material number of instances where providers have had to undertake a further planning process in order to ensure plans were workable and achieved the participant's objectives (one service provider interviewed estimated that 20-40% of plans are not done well, with 10% being of extremely poor quality); and
- Financial considerations can be prioritised over clinical and other support needs so that the plan is funder-driven rather than participant driven, perhaps emphasising the reality that the NDIA has a conflict of interest in relation to planning as described in the last section.

The interviewees generally considered that poor quality PCPs are the result of:

- planning being undertaken by people with a lack of disability sector experience, independent of who employed them;
- the volume of plans that had to be completed which had constricted the available time and resources for each individual plan;
- telephone-based planning being used to speed up the rate of recruitment;
- in the case of existing service providers, the lack of input opportunity notwithstanding in some cases the service provider might have a long relationship with the

participant and may also be guardian or the primary carer. All were concerned as to the subsequent impact of poor PCPs on the supports provided to participants;

- the planner's lack of knowledge regarding the life of the participant, their natural supports and community involvement; and
- the transactional nature of the NDIS itself and the lack of flexibility outside of the funded items.¹⁶

The consequences resultant from poor planning processes impact the participant, the NDIA and the service provider. Interviewees commented that these impacts included:

- delays in the provision of supports to users, including in relation to early intervention—the delivery of which constitutes a significant component of NDIS' longer term objectives;
- frustration experienced by participants who are not empowered to finalise the planning process;
- frustration caused to participants' natural supports—a group relied on by the NDIA to ensure costs are controlled—as a result of LACs' lack of understanding of participants' needs and reticence to involve natural supports and those who know the participant well to be involved in the planning process, especially when these knowledgeable people are also service providers;
- the development of plans unable to meet the clinical and care needs of the participant due to the lack of understanding and limited experience of planners;
- increased frustration and community angst regarding the success or otherwise of the NDIS including in relation to the roll out phase which is impacted significantly by the planning process and its inherent inefficiencies;
- increased cost to the NDIS as a result of repetitive planning processes entered into in order to rectify previous poor planning outcomes; and
- increased cost to service providers as a result of the inefficient client on-boarding process exacerbated by the need to rectify plans.

Interviewed stakeholders from service provider organisations stated that often they were not consulted during the planning process and had to repeat the planning process for many participants. This results in overlap and duplication within the current planning process, increasing the cost of service delivery, exacerbating the frustration felt by participants and returning a poor value-for-money result for the NDIA.

Additional complications occurred when the person doing the plan was not familiar with the formal and informal supports that were already being provided prior to the plan being developed, such as those previously approved through a state-based agency. Service providers were concerned that, while they are not funded to rebuild plans, they feel compelled to do this when a plan is of such poor quality that it would result in a reduction of choice or service for the participant or in poor clinical outcomes.

¹⁶ For additional discussion here, see the National Disability Services (NDS) report "How to get the NDIS on Track", May 2017: <https://www.nds.org.au/news/how-to-get-the-ndis-on-track-nds-paper-released>

Several interviewees that were service providers stated that they did not want to do the planning, they just want good plans for service users. If good plans were developed at the outset, providers could get on and deliver services within the NDIS system without the impact of additional costs and inefficiencies—impacts felt by the participant, by the NDIS and by service providers.

Who is best able support participants to complete PCPs?

As described in the introduction to this report, the issue regarding who should support a participant when creating a PCP was seen as central to any successful plan development process. Indeed, the topic derived significant comment from the key stakeholders interviewed. This arose partly because of the different models used in deploying LACs who were responsible for planning in NDIS trial sites—some LACs in some sites being employed directly by the NDIA or state government agencies and in other sites being employed by contracted NGOs—meaning that differing approaches might be taken and differing levels of capacity and experience impacted the extent to which the process was successful.

In terms of the current arrangements, the major concern expressed by stakeholders interviewed was that the individual LAC (independent of who employed them) supporting participants' during the PCP process may not be sufficiently qualified or experienced to ensure the production of good quality plans. This could be because: the person had no experience in the disability sector; may not be known to the participant (e.g. service providers who may have been working long term with a participant were not contributing to the process unless invited by the planner); are not from the local community; are not knowledgeable of the supports (including non-traditional supports) available in the community; and/or the person conducted the planning process by telephone and not through face to face contact.

In terms of the impact of this arrangement on plan quality, the WA NDIS Trial Evaluation report¹⁷ noted that the observations of participant's talking about their experience of the NDIA planning process and the resolution of the reasonable and necessary requirements varied considerably from one plan to the next.

The plans reviewed demonstrated a low level of detail about the participant and limited information about the amount of informal supports currently experienced. The formal funded supports were specified and budgeted based mainly on the LAC's degree of experience, the guidelines provided by the NDIA and the LAC's interactions with the participants.¹⁸

Interviewees provided suggestions in response to these problems, stating that they were looking to be constructive and focused on ensuring an outcome of value to the participants. For instance, several interviewees suggested that there could be a separation of the elements of the PCP process. For instance, a number suggested that the NDIA (or their authorised delegate such as a state government agency) should approve plans, but the person or organisation completing the plans could be different. A panel of registered organisations that could provide planning services was suggested, especially where the plans related to supports required by people with complex needs.

Others noted that the NDIA may have a role in determining the funding entitlement attached to each plan, but then participants could: (1) be encouraged to approach service providers to

¹⁷Western Australian NDIS Evaluation Report: Stanton's 2017. Executive Summary Page 8.

¹⁸ In Western Australia, the Western Australian and Commonwealth Governments' Trial has been extended from July 2016 to July 2017. Additionally, a state administered scheme is being implemented in Western Australia titled 'WANDIS'. A feature of WA NDIS includes the retention in of LACs placed within the community that will support participants' to complete their PCPs.

complete the details of the plan, taking the plan that suits them best (provides the greatest amount of service and/or best value for the money allocated); or (2) develop their own plan and contract supports to the value of the allocated funding. It was clear, though, that there is support for the establishment of a planning arrangement that is flexible and is adjusted to meet the needs of the participant in the context of the relative complexity of their needs.

Timeliness in completing PCPs

All stakeholders interviewed considered the length of time to complete the planning process was too long and that this was having a detrimental impact on the welfare of participants. Interviewees provided examples of planning processes that had taken up to 12 weeks to complete and described the impact this had for both participants and service providers, including in relation to delays in the provision of early interventions.

Interviewees noted that the NDIA was taking steps to address this but doubted that the issues would improve given the number of plans that would be required to fully roll out the NDIS, particularly if the current policy setting relating to planning (required frequency to review plans, timing for rollout, separation of planning and provider functions) remained as at the present time. That is, notwithstanding the roll out process is a one-off event, the requirement to review plans at least annually means that, if the NDIA persists in its current planning arrangements, at a minimum, 460,000 plans would need to be reviewed each year. Logistically, this is expensive and its value is questionable. Intra-year reviews found to be necessary would increase this figure as would the planning requirements of new entrants into the scheme.

Interviewees were equally concerned about the steps that were being taken by the NDIA to quickly bring people onto the scheme, such as plans that were being developed over the phone and that the time allocation for developing some PCPs had been reduced.

The issue of independence (perceived conflicts of interest or bias)

Interviewees were aware of concerns regarding the independence (or otherwise) of the person or organisations supporting participants' in completing their PCPs. In particular, they confirmed anecdotal findings relating to four main areas in which conflict could arise and potentially influence the planning process:

1. service providers may overstate the needs of the participant (for the participants and/or their own benefit) resulting in participants receiving more service than their entitlement and organisations receiving more income. (Note: For organisations to profit from over servicing, they must be providing services at a surplus or achieve higher surpluses with higher volumes—this is not necessarily so);
2. the service provider may promote the inclusion of particular services they provide in order to ensure a participant's supports better fit their own operational needs regardless of the needs of the participant;
3. service providers could promote the services of affiliated organisations to receive benefits, such as reciprocal referrals; and/or
4. the LACs / NDIA could focus on cost savings during the planning process, prioritising supports provided by natural supporters and/or favouring cheaper services and support options or even reducing the assessed reasonable and necessary needs.

The majority of interviewees commented that separating the planning and provider functions was intuitively correct and would be the ideal outcome, but that excluding service providers altogether when they were a key source of participant and service information appears to be costing more in terms of reducing the quality of plans than it is likely to be achieving in the context of risk mitigation. Interviewees also noted that organisation-centric behaviour of the type suggested to be encouraged by conflicting interests in the planning process are only short term strategies and that, in the long term, service providers' best interests lay in providing the best and most appropriate service in the context of the participant's needs and goals. This is especially so in the case of clinical risk.

Interviewees also noted the incongruence of two of the objects of the NDIS as they relate to the independence of the planning process. On one hand, to meet the object of providing optimal choice and control to participants, the philosophy of ensuring the planning process is independent from organisations providing supports to participants is to be supported. On the other hand, to meet the object of making the NDIS financially and operationally sustainable, approaches to planning that reduced costs and increased timeliness but may compromise independence may be required.

For example, interviewees stated that, in seeking to structurally separate planning and service provider functions, many people/organisations that were not experienced in the disability sector are now supporting the participants to complete their plans because there are simply not enough people with the requisite skills and experience needed to meet the planning demand in the roll out phase or thereafter. As such, eliminating experienced staff who may be currently working for service providers from the process is already demonstrably weakening planning outcomes and the prospects for the development of a timely and appropriate plan. Such outcomes detrimentally impact participants.

Proportionate Responses to Conflict Risks

While interviewees could appreciate the arguments that the conflicts identified represented a risk to participants' exercising choice, to the financial sustainability of the scheme and to the "optics" related to the objectives of the NDIS, they also noted that it is equally important to consider the extent to which the blanket banning of the same service provider planning and supporting participants is a proportionate response to the risk. On the other hand, and as described above, the NDIA is also conflicted in the context of it being the sole planning support provider given its need to manage costs and participant expectations and a question might be raised as to whether or not the NDIA is any more or less susceptible to succumbing to the same risk as service providers.

Indeed, at the extremes, the options of either the NDIA or the providers undertaking planning support are both less than satisfactory while a planning process that allows for flexibility in the context of needs and which constitutes a balanced mitigation against the risks that may be borne out as a result of these conflicts is most likely to achieved the results required.

The prospect of identified poor outcomes needs to be balanced against the practical problems of (a) needing to recruit organisations/people to support participants with planning that may not have relevant experience in the disability sector and (b) the high cost of having a complete separation of planning and provider functions within the architecture of the NDIS.

National Disability Services (NDS) posit that the conflict of interest can be managed by:

- the NDIA maintaining the authority to approve individual budgets;
- the NDIA continuing to develop evidence-based reference packages; and

- supporting participants to exercise informed choice of (service) provider.¹⁹

All of these risks to the scheme also need to be balanced against the positive outcomes that can be achieved by service providers having a balanced role to play in the planning process.

These include:

- Where the PCP is being developed for an existing client, often the service provider has a very strong relationship with the participant and the provider's input into the plan can be critical to it being of high quality—this is especially the case in the context of complex needs. Such input can also reduce the need for replanning and ensure a timely outcome for the participant.
- The involvement at the planning stage of providers in the case of new participants is also critical in terms of getting the plan right the first time and ensuring early intervention opportunities are leveraged. If the plan is right the first time it will avoid the cost of re-planning, and reduce the frustration experienced by the participant and their natural supports, at what is a very difficult and high pressure time for them. It will also provide a useful base-line for future plans and associated funding.
- If a substantial proportion of the planning process can be undertaken by the provider, there can be considerable savings made by the NDIA in terms of reducing the number of planning staff required (we have already noted that the need for experienced and appropriately qualified staff for this task has already outstripped supply) and by focusing NDIA processes toward risk-based assurance processes over the plans rather than participation in their development.

Overall, there was a clear indication that interviewees recognise the risks but are concerned that the remedy is disproportionate to the impact on participants. The proportion of planning costs to the value of packages provided highlights that there is a requirement for the NDIA to concentrate its resources where it can get the most value for money in the context of material risk mitigation.

Cost and difficulty of scaling the PCP process

Another constraint is that imposed by the NDIA itself—the requirement to review the plan of every participant annually. The majority of stakeholders interviewed contended that the current approach to developing PCPs would not be able to be retained if the NDIS was to be rolled out on time and within budget. However, Western Australian based interviewees recognised that in the recently announced WA NDIS model (with additional funding) that this schedule and timeline was possible within the context of that state.

Nationally, stakeholders considered that the current policy settings (annual assessment, allocation of up to 6 hours (initially this was 12 hours) paid support to develop an initial plan) and the projected number of participants to be admitted to fully roll out the scheme would require the NDIA to review their approach to PCPs. Additionally, concerns were raised regarding the risk to service safety and quality that manifest with a roll out process that is undertaken too quickly.

To fully rollout the NDIS will require a further 430,000 participants to be brought into the scheme in the next three years, all of whom require a PCP. If the NDIA retains its

¹⁹ National Disability Services: How to get the NDIS on track, May 2017, page 7
<https://www.nds.org.au/news/how-to-get-the-ndis-on-track-nds-paper-released>

requirement for annual reviews for every participant, then this number of plans would be required to be completed for each of the ensuing years, some 460,000 annually once the scheme is up and running plus the plans of new entrants. This approximates to 8,850 plan reviews conducted and approved each week. As stated above, this process is expected to generate an annual cost to the NDIA of around \$900 million to \$1.0 billion.

Therefore, the question needs to be asked as to whether the NDIA can realistically maintain its requirement for the annual review of PCPs for all participants? The logistics of doing so may be too great given the resources available to the NDIA and the requirement to fully roll out the NDIA by 2020.

Options in relation to scaling

The cost of this is also an important consideration—does the risk to the NDIS' intent of delivering choice and control to participants warrant this level of expenditure? Is it a proportionate response in the context of the risk? An alternative model, focusing on review and assurance using a risk assessment process, may allow the NDIA to achieve significant savings without impacting the objectives of the NDIS materially—at least no more than the poor planning outcomes being achieved currently impact them.

A further decision that the Council of Australian Governments and NDIA Board may take is to extend the timeline for the rollout. This would reduce the immediate demand for PCP's which would result in more resources being available for the PCPs to be completed. It would also allow for the assimilation of experience and for adjusting the policy direction to ensure a more cost effective implementation process.

However, politically it is likely that it would be difficult for the Commonwealth Government to extend the time for implementing the NDIS. The degree of expectation that has been generated by the current and previous Governments in the community may invite media attention that diverts much needed NDIA resource and attention away from the important task of achieving the roll out.

Additionally, if you accept this pragmatic view, then you would likely subscribe to the following assumed decision making framework:

1. the NDIS will need to fit within the budget allocated to it by the Government;
2. the Government will not alter the timeline for the rollout of the NDIS;
3. the NDIA will need to relax its requirement to review the PCP for every participant annually; and
4. the community will not accept a high percentage of the scheme's cost being used for administration (including the PCP process) when the opportunity cost of this equates to providing less supports to participants.

Therefore, it is increasingly important for the NDIA to consider suitable trade-offs that may compromise its sense of the prospects for achieving the objects of the NDIS legislation (prospects which will not necessarily be materially reduced if there is a change in the planning process) to make it the best possible scheme for the funding that is available to deliver it.

Overall, in relation to the first issue posited above, it is very likely that planning outcomes would be more acceptable if service providers were able to be involved in the process within a framework that proportionately responded to the risks associated with this proposition.

PCPs - The Options for a Proportionate Response to Risk

In multi-lateral decision making and negotiation, all participants have direct or indirect interests and are obligated to advocate for these if needed. The interests of one party may be aligned with or be in conflict with the interests of another.

In the case of PCPs, the aim is for the participant to achieve the best plan and supports possible within the parameters of the NDIS, and for this to be achieved as efficiently and effectively as possible. All parties interviewed agreed to this fundamental proposition.

The results of this inquiry have found that in the current sector, service providers have significant knowledge, skills and experience that should be available to improve PCPs and to support the introduction of the NDIS. Indeed, some interviewees identified that NDIS participants have expressly stated that they would like input and advice from their existing service provider but this was not permitted under the current structure.

As there is value to be gained in involving service providers in planning, this section considers the options available while mitigating risks of conflict/bias to ensure that publicly funded resources are applied as efficiently as possible and the NDIS can continue to be rolled out.

The organisations involved in the planning and service provision processes must also balance their own internal conflicts. For example, the NDIA must balance the conflicting requirements of meeting the support needs of participants, managing a budget and administrative burden, and the political risks inherent in under- or over-supply. Not-for-profit providers must balance their need to fulfil their mission and serve their beneficiaries while also remaining financially sustainable. And of course, participants must make choices regarding their services and providers that give them the best options relative to full participation.

Three basic options were explored in our interviews. Interviewees were asked to evaluate these and also if they were able to suggest alternatives. No other options were suggested. The options discussed were:

Option 1 – Status Quo: That is, LACs employed by the government agency or by organisations not providing services complete all PCPs.

Option 2 – Hybrid Risk-based Model: Service providers having a role in the planning process to improve efficiency and the quality of planning outcomes but in a balanced way such that the risks to the NDIS' objectives are proportionately responded to. The NDIS allocates its planning, assurance and monitoring resources to the areas of highest risk determined by highest cost and maintains its plan approval role. Thus the NDIA makes planning and monitoring savings where the risk is considered to be minimal.

Option 3 – Provider Risk-based Model: Allow all service providers to undertake the planning process for all plans regardless of whether or not the plans relate to participants who are supported by the same service providers.

We have undertaken an analysis of the pros and cons of these options based on our research, but accurately modelling each of these variations and the resources required is not within the scope of this initial study. The nuances of each option need to be considered in greater depth once initial concepts have been agreed.

Criteria for evaluating options

In proposing options 2 and 3 for discussion with interviewee's, BaxterLawley considered the relationship between regulation and managing risk. The reason for this was that if either options 2 and 3 were to be adopted, then service providers would be completing PCPs with participants and these activities would need to be supervised ('regulated') by the NDIA to ensure providers were acting in the best interest of the participant (for example, maximising choice and control) and not simply recommending services that would subsequently provide advantage to the service provider. Such supervision would be considerably less expensive than the current planning arrangements, while the risk to the participant can be prioritised according to the extent of the risk to the sustainability of the scheme and to choice and control for participants.

"if you don't have enough money, time and trained staff to provide for a rigorous and independent PCP process for every participant, then you need to design a system in such a way that you allocate your available PCP resources to the areas of most risk—for the participant, scheme and service provider".

- Interviewee

Regulatory Risk and Proportionate Responses

This task of regulation in the context of the NDIS is similar to many other areas of public sector management where the government acts as a regulator of individuals and/or organisations that provide services to the public. The relevant concept is termed 'risk-based regulation' and the term 'proportionality' (being a proportionate response to the risk of a negative outcome) is used to describe the approach. This is defined as:

*'the application of a systematic framework that prioritises regulatory activities and deployment of regulators' resources on an evidence-based assessment of risk.'*²⁰

While regulators have always made regulatory design, implementation and allocation choices, partly to manage limited resources and partly to reduce the impact on the regulated entity, risk-based regulation formalises and provides consistent structure to the decision making process.²¹

The goal of public sector agencies in applying a risk based approach is to foster voluntary compliance from those being regulated while allocating regulatory resources to focus on the areas where the most significant risk to the policy outcome lies. To achieve this, regulators usually provide extensive training opportunities to those entities being regulated, including encouraging cross-sector structures so that organisations can learn from each other. Additional to this, they will often make the consequences of non-compliance significant in order to encourage ongoing compliance. Such consequences can include fines levied on organisations and individuals charged with breaches of compliance or actual attempts at fraudulent behaviour, de-registration so that the organisation can no longer provide services or participate in the regulated activity.

²⁰ Baldwin & Black 2007; Black 2010a from Bickley S. *Risk Based Regulation*
https://www.onrsr.com.au/__data/assets/pdf_file/0003/13278/Presentation-Risk-Based-Regulation-Central-BOF-9-December-2015.pdf

²¹ Sparrow M. *The Regulatory Craft: Controlling Risks, Solving Problems, and Managing Compliance* 2000

Perhaps the most recognisable example, and one that includes significant inherent risk that impacts all of us in terms of protecting the national income, is the way the Australian Taxation Office (ATO) proportionately meets its obligations. The ATO allows tax payers to submit their calculations of what their tax position is and then intelligently supervises that process by investigating and examining the data provided in such a way as to ensure they achieve the best results for the national revenue in an efficient manner. Importantly in relation to this concept, the NDIA is currently collecting the data needed to undertake intelligent supervision of the planning and implementation process. The use of reference packages also supports such a process.

Further, there are numerous examples of how proportionality is applied in more general public sector situations. For example, the Department of Educational Services in Western Australia uses a proportional approach to the regulation of non-government schools. It does this by assessing schools during regulatory visits then setting the length of time to their next regulatory visit based on the school's performance and compliance with regulations. For example, schools performing poorly have their registration renewed for only 12 months before another regulatory visit is required; whilst better performing schools have their registration renewed for three, four or five years. In this way, government's regulatory resource (agency staff making regulatory visits) are directed at schools where there is greatest risk to the education of children and non-compliance with relevant legislation and regulation.

Additionally, the consequence of non-compliance is high—schools can lose their registration and be forced to close. In summary, the Department of Education Services is using its limited resources (regulatory visits, sector education and training) combined with high penalties for non-compliance to encourage good educational practice and compliance with regulations from all non-government schools.

The options

In considering the three options that were presented to the interviewees, it was recognised that there were trade-offs that needed to be made if the PCP process was to fit within its funding, political and operational constraints (as described above). As expected, interviewees perceived advantages and disadvantages in each option, but most were in favour of option 2 in the context of that option needing to be refined as additional consideration might be undertaken during the establishment phase. These options are also summarised in table 4 below while the risks associated with each option are tabularised in table 5.

Option 1 – Status Quo

Most interviewees believe this option would be effective (although expensive) once the NDIS had been in operation for some years but it is not achievable or practical at present given the number of plans to be developed by 2020 and the number that will need to be reviewed within the current PCP policy settings. One interviewee commented that with unlimited time and money, this may well be the best option.

However, if the NDIA changed the requirement to review PCPs annually and relaxed some other requirements, then they stated that option 1 would probably be workable but very bureaucratic and extremely expensive. It would also need considerable time in order for the LACs to build up appropriate levels of competence, experience and capacity. The advantages were seen to be that the LAC could be embedded in communities, act as an honest broker supporting participants' engagement with advocates, consumer groups and

providers, and the option provided a structural separation between participants and service providers which removed a real (or structural) conflict of interest/bias. However, it was also noted that the option did not remove the NDIA's conflict.

Indeed, the question of 'perceived' conflicts of interest received a lot of comment from interviewees. Most took the view that perceived conflicts of interest were always present in the disability sector and that structurally separating those responsible for planning (e.g. LACs) from service providers would not eliminate these. They stated that LACs, no matter who employed them, were prone to allegations of favouring some service providers over others, or preferring certain approaches to providing supports, or favouring the need to control the overall cost to government. All agreed that conflicts of interest or bias were inherent in the sector, and had to be acknowledged, recognised and managed no matter what structure was used for developing PCPs. All also recognised that these conflicts have been managed historically as well.

The disadvantages of option 1 were seen by interviewees to be the cost and challenges of employing the number of LACs with appropriate qualifications and experience required to fully rollout the NDIS, the lack of timeliness, and the opportunity cost of deploying LACs rather than spending less funds on a proportionately focused regulatory regime and allocating the remaining funds to service delivery. Spending the estimated \$900 million to \$1.0 billion annually on the planning process was seen to represent a poor resourcing decision and one that is not proportionate to the risks being faced.

Option 2 – Hybrid Risk-based Model

The hybrid model, comprising a combination of NDIS and provider participation in the planning process based on an assessment of risk, was favoured by a majority of interviewees as the most effective and efficient option to support participants develop quality PCPs given the funding, political and operational constraints impacting the NDIS. The reasons for supporting option 2 were largely pragmatic—it provided the best chance to produce high quality PCPs within the available funding and in the timeline assigned for rolling out the NDIS while also protecting the public purse. It was seen as a proportionate response to the risks inherent in the planning process, allocating regulatory resources to higher risk planning activities.

Generally, the risks associated with poor planning outcomes and over investment in services—for participants, the NDIA and for providers—is likely to increase as the complexity of need increases. Indeed, the more complex the needs of a participant, the higher the cost of service delivery and the greater the impact on scheme sustainability.

Additionally, the cost of planning should be proportionate to the complexity of the plan and the cost of the supports being provided. This proportionality should then extend to the level of regulatory control maintained by the NDIA in order to ensure it is applying its resources where they can be most effective, including in relation to redirecting resources from compliance processes to funding for supports.

Therefore, most people interviewed considered that participants with lower cost plans (equating to lower complexity in their needs) could be supported by providers to complete PCPs with minimal risk, whilst participants with complex needs and resultant high cost plans needed to be completed by independent planners but with significant input from current and prospective providers in order to ensure the care plans were clinically effective. That is, the NDIA resources should be applied where they are most effective in reducing risk.

Figure 1 provides a graphic representation of this idea, where the cost of planning is shown to increase as the complexity of needs increase. Table 2 serves to provide the framework of

a Hybrid Risk-Based model and table 3 provides an indicative template for planning timing and resourcing. The graph is arbitrarily divided into three sections:

(1) Low Cost, Low Risk Plans: the providers assist in plan development while the NDIA conducts random reviews/audits. The cut off here could be plans costing up to \$20,000 per annum. This would currently cover about 40% of plans being created;

(2) Medium Cost, Medium Risk Plans: the complexity is increased and providers support the planning process but the NDIA approves the plan before activation. The cost range for these plans could be \$20,001 to \$100,000, covering about 50% of plans being created currently; and

(3) High Cost, High Risk Plans: the needs are complex and the NDIA / Independent Planners complete the plan. The cost range for these plans could be over \$100,001 representing about 10% of plans currently being developed.

(4) Package Funding Option: Interviewees also put forward a variant that could be included as part of Option 2. It was termed 'packaging'. For certain categories of participants where support needs are complex and where eligibility requirements can be met (e.g. diagnosis by recognised professional), funding can be provided without a PCP being completed. The participant can then approach registered service providers with a view to obtaining a plan commensurate with their support requirements and which can be used to compare prospective providers. For example, when a participant is a child under five and early intervention is important, a 'package' of funding could be provided on scheme entry which allows parents/carers to approach providers immediately in order to commence early intervention supports (e.g. therapy). This contributes to an important object of the NDIS—early investment in order to minimise long term cost and has the added benefit of reducing the number of plans to be completed.

Figure 1 – Representation of Hybrid Risk-Based Model

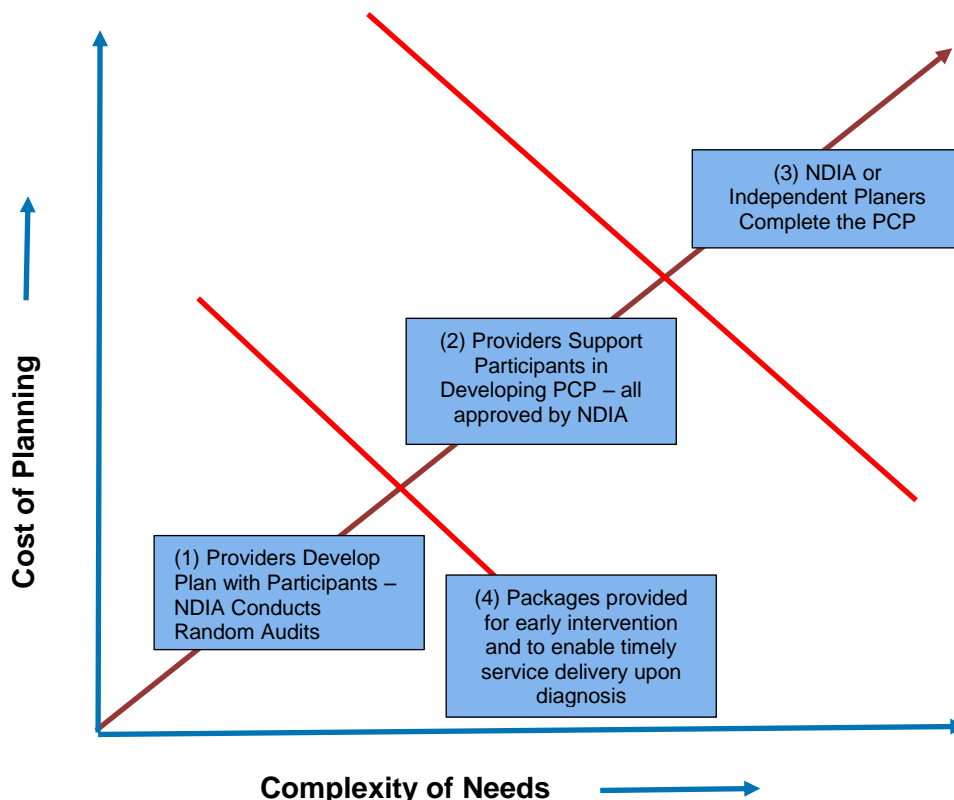


Table 2 – A Hybrid Risk-Based Model at a glance

| Element | Who Assists with the PCP Development | Approval | Comment |
|---|--|---|---|
| Determining Eligibility | Assessment by recognised registered clinical practitioner. Families, clinicians and service providers can assist prospective participants with eligibility applications to the NDIA. | NDIA approval. NDIA determines funding parameters which determines planning approach (see below). | Determining eligibility is critical to the success of the scheme. The NDIA needs to manage eligibility decision making. |
| PCP Process | | | |
| Plans less than \$20,000 | Service providers complete (with random checking from NDIA). Advocates/consumer organisations invited to participate by participant. | NDIA spot checks the PCPs completed by providers; with high penalties for poor or inappropriate planning | This will account for approximately 40% of all current funding. ²² |
| Plans between \$20,001 and \$100,000 | Service providers complete. Advocates/consumer organisations invited to participate by participant. | NDIA approval all plans. LAC has the delegated authority to do this. NDIA spot checks the PCPs completed by providers; with high penalties for poor or inappropriate planning (e.g. loss of registration to be a provider for serious misdemeanours). | This will account for approximately 50% of all current funding. |
| Plans greater than \$100,001 | Government or Independent planner to complete the PCP. | NDIA regional manager approves the independent plan. | This will account for approximately 10% of all current funding. |
| Packages | Provider develops packaged plan once diagnosis in support of eligibility is received. | Package pre-approved by NDIA based on type of diagnosis. | Plan reviewed on anniversary or sooner depending on cost. |

The timing of planning processes is also of considerable importance. While it does not necessarily impact the decision of who should assist in the development of PCPs in a policy sense, pragmatically, the timing of the planning process also causes significant potential problems such as delays in service delivery, early interventions and supports as well as causing significant financial stress to providers.

²² Source: COAG Disability Reform Council Quarterly Report 2016/17 Quarter 2, P. 83. Reports <https://www.ndis.gov.au/about-us/information-publications-and-reports/quarterly-reports>

Table 3 – A Hybrid Risk-Based Model—indicative timing and resourcing of planning

| | Priority | Time Funded | Comment |
|--|--|--------------------|---|
| New participant – in crisis. | High Priority. Intense and urgent planning | 10 – 15 hours | On crisis referral. Will involve eligibility assessment and co-ordinating multiple agencies. |
| New participant – not in crisis. | Standard PCP process (as described below) | 6 hours | On standard referral Will involve eligibility assessment and co-ordinating some agencies. |
| Existing Participants have review of PCP at transition points: <ul style="list-style-type: none"> • Pre-school to school • School to work • Mid-career • Retirement • Change of family circumstances | Standard PCP process | 6 hours | On standard referral May involve co-ordinating some agencies. |
| Shared supported accommodation | Review process completed by participant and providers. Approved by LAC. | 2-3 hours | On standard referral Every two to three years |
| Community based participants | Standard PCP Process | 2-3 hours | On standard referral Every two to three years |

Option 3 – Provider Risk-based Planning Model

The arrangement would see all planning being undertaken by providers while the NDIA would apply a risk-based assurance process, examining plans using audit sampling techniques and encouraging compliance by applying random surveillance and significant penalties to providers and/or their relevant personnel.

This option received similar comments from interviewees as those provided for option 2. Most recognised that a risk based framework was a pragmatic approach given the funding constraints, but were concerned about issues with conflict of interest and the potential negative impacts on choice and control for participants if it was implemented across the board.

Most interviewees agreed that a hybrid risk-based model was more supportable than a provider risk-based model.

Table 4 Options for involving service providers in planning while mitigating risk of conflict of interest

| Option | Details | Person who supports | Approval | Advantages | Disadvantages |
|--------------------------------------|--|--|----------|---|---|
| 1. Status Quo. | LACs support participants to complete PCPs (LAC organisation NDIA, state government agency or contracted NGO (who performs LAC function). | Employee of NDIA, state government agency or contracted NGO that provides LAC service. | NDIA | Can generally avoid conflicts of interest (apart from the requirements and directions of the government). LACs can be embedded in local communities which enhance local connections and innovation. | Expensive – estimated cost is approximately \$900,000,000 to \$1 billion per annum. There may not be enough people with sufficient competencies to fulfil LAC roles in next three years. |
| 2. Hybrid Risk Based Model. | NDIA, state government agency or contracted NGO complete PCPs that present a risk to the participant, provider, or scheme. Providers complete low risk PCPs (note: ‘bundling’ option could also be introduced in this option). | Employee of NDIA/ NGO or service provider for low risk PCPs. | NDIA | PCP process can be designed to fit within available budget whilst minimising risk. Can be scaled so rollout schedule can be maintained. Reduces the overlap and duplication of planning efforts. Takes advantage of existing expertise of providers to complete plans. | Conflicts of interest inherent with providers completing PCPs. |
| 3. Provider Risk-Based Model. | Providers support participant’s complete PCPs within a risk based framework (e.g. risk to participant, provider or scheme) used to determine the level of scrutiny by | Employee of service provider. | NDIA | Reduces planning costs significantly. Avoids the overlap and duplication of planning efforts. Takes advantage of existing | Conflicts of interest inherent with providers completing PCPs. |

Note: In formulating these options, BaxterLawley noted that were many variations on each of these models that could have been described. As broad options, they were designed to generate discussion on key issues for stakeholders during interviews.

Concluding remarks

In reviewing options for undertaking the planning process, it is critical to consider the pragmatic considerations likely to mitigate the risks that the current policy arrangements are intended to respond to.

It is clear that the current arrangements are not achieving the desired results, either in terms of numbers of successful plans established or in terms of cost in time and money. This is partly as a result of unintended consequences related to the magnitude of the scheme (lack of trained and experienced staff; sheer weight of numbers) and partly as a result of the impact of excluding service providers from the planning process. Both of these groups of consequences negatively impact the quality and timing of the plans, increase costs and increase the frustration of participants.

While it is tempting to see this problem as a one which can be dichotomised into two elements—a roll out element and a full scheme element, in reality the size of the scheme at full roll out and the constraints likely to continue for the medium term in the context of staff availability and timing, mean that the policy needs to be settled in a way that balances the risks of service providers being involved in the planning process with the prospective impact of risk mitigation process.

However, the NDIS is new and all stakeholders are learning as the scheme is rolled out. As such, in the roll out phase (without any decision to extend beyond the roll out period), adopting a risk-based approach such as that described in option 2 or to enable providers to support some participants complete PCPs is a realistic option. The funding required to deploy the number of LACs that are needed to complete the PCPs for new participants and review their plans annually is not sufficient and the quality of the plans will continue to be compromised by the lack of suitably trained personnel that can be employed as LAC's.

Table 2 provides a comprehensive summary of option 2 and includes components suggested by interviewees. It considers some of the high level risks associated with each component, including in relation to cost.

It is considered that this model could result in savings to the NDIA of as much as 4% of total administrative burden (as opposed to 8% with if the current planned approach is continued) of the total NDIS budget. This could result in an additional \$400 million being available to provide additional supports for participants. However, further exploratory work is required in order to properly quantify these savings.

Finally, implementing a form of option 2 allows for some trade-offs to occur. Timing and cost are traded off against conflict of interest. The trade-offs that compromise choice and control by participants, and the independence of the planning process would likely be fiercely contested by many proponents of the NDIS.

However, given the constraints of money and time and the importance of developing high quality PCPs, these trade-offs may well need to be made to successfully implement the NDIS.

Table 5 Options for involving service providers in planning while mitigating risk of conflict of interest

| | OPTION 1 | OPTION 2 | OPTION 3 | |
|--|--|---|--|--|
| | Status Quo LACs support participant's complete PCPs. | Hybrid LAC Model – NGO and LACs support participant's complete PCPs based on relative risk | Risk Based Model: Providers complete PCP's & NDIA Assure | Inherent risk of this factor causing an unintended outcome |
| Economic Considerations | | | | |
| Cost of the option | High Risk | Medium Risk | Low Risk | Low Risk |
| Potential savings within the option | Low Risk | Medium Risk | High Risk | High Risk |
| Sustainability of the option | Low Risk | Medium Risk | Low Risk | High Risk |
| Technical Issues | | | | |
| Task difficulty | Medium Risk | Medium Risk | Medium Risk | Medium Risk |
| Eligibility Assessment | Low Risk | High Risk | High Risk | High Risk |
| Person centred planning (quality) | High Risk | Medium Risk | Low Risk | High Risk |
| Stakeholders Support | | | | |
| Quality of outcomes for participants | High Risk | Medium Risk | Low Risk | High Risk |
| Loss of stakeholder support | High Risk | Low Risk | Low Risk | Medium Risk |
| Whole of Government Issues | | | | |
| Outsourcing of Person Centred planning costs | N/a | Medium Risk | Medium Risk | Medium Risk |
| Outsourcing of eligibility assessment costs | Low Risk | High Risk | High Risk | High Risk |
| Opportunity to reduce costs that are attributed to the government | High Risk | Medium Risk | Low Risk | Medium Risk |

Additional References

The following references were used to provide background information to Baxter Lawley in preparing this Report. Specific references to some of the references below are provided within the Report.

COAG Disability Reform Council Quarterly Reports 2016/17. Quarter 2 & Quarter 3 Reports <https://www.ndis.gov.au/about-us/information-publications-and-reports/quarterly-reports>

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