
Joint Standing Committee on the National Disability Insurance Scheme

NDIS Planning Interim Report

December 2019

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Committee Membership

Chair

Hon Kevin Andrews MP

Menzies, VIC

Deputy Chair

Senator Carol Brown

ALP, TAS

Members

Senator Wendy Askew

LP, TAS

Senator Anthony Chisholm

ALP, QLD

Ms Libby Coker MP

Corangamite, VIC

Senator Hollie Hughes

LP, NSW

Dr Fiona Martin MP

Reid, NSW

Ms Alicia Payne MP

Canberra, ACT

Senator Jordon Steele-John

AG, WA

Mr Andrew Wallace MP

Fisher, QLD

Committee Secretariat

Ms Bonnie Allan, Committee Secretary

Mr Alan Raine, Principal Research Officer

Ms Penny Bear, Senior Research Officer

Mr Andrew McIntyre, Senior Research Officer

Dr Ros Hewett, Senior Research Officer

Ms Nicole Baxter, Administrative Officer

Mr Michael Fisher, Administrative Officer

Ms Sofia Moffett, Administrative Officer

Committee web page:

PO Box 6100

Parliament House

Canberra ACT 2600

www.aph.gov.au/joint_ndis

E-mail: ndis.sen@aph.gov.au

Ph: 02 6277 3083

Fax: 02 6277 5829

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List of Recommendations

Recommendation 1

- 3.65 The committee recommends that fully costed, detailed draft plans be made available to participants at least one week prior to their meeting with the official with the authority to approve the plan, and that at the meeting the participant have the opportunity to rectify the plan.

Recommendation 2

- 3.66 The committee recommends that the National Disability Insurance Agency ensure that participants are given the opportunity to meet face-to-face with an official with authority to approve a plan before the plan is approved.

Recommendation 3

- 3.91 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to enable participants to review only part of a plan, or to vary a plan, in appropriate circumstances.

Recommendation 4

- 3.94 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to require the National Disability Insurance Agency to complete an unscheduled plan review within 45 days of receiving a request from the participant.

Recommendation 5

- 3.95 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to require the National Disability Insurance Agency to complete internal reviews of decisions within 45 days of receiving a request to conduct the internal review.

Recommendation 6

- 3.97 The committee recommends that the National Disability Insurance Agency publish settlement outcomes relating to external review by the Administrative Appeals Tribunal, in de-identified form.

Recommendation 7

- 3.106 The committee recommends that the National Disability Insurance Agency standardise the terminology it uses to refer to persons, processes and other matters associated with the NDIS.

Recommendation 8

3.107 The committee recommends that the National Disability Insurance Agency (NDIA) clearly define key terms associated with the NDIS, and with the planning process in particular. Where a term refers to a person, organisation or other body, the committee recommends that the NDIA clearly define that entity's role, functions, responsibilities, limitations and accountability.

Recommendation 9

3.118 The committee recommends that the National Disability Insurance Agency (NDIA) ensure that additional training and skills development is provided to all persons involved in the planning process (particularly NDIA officers and LACs), to ensure that all such persons:

- are familiar with a range of disabilities experienced by participants, and develop specialisation in particular disability areas;
- are familiar with allied health expertise;
- understand the specific needs of Aboriginal and Torres Strait Islander participants, and participants from culturally and linguistically diverse backgrounds, to ensure that they are able to deliver culturally appropriate services; and
- receive training in domestic violence awareness.

Recommendation 10

3.131 The committee recommends—in circumstances where a new plan has not been approved at the plan review date—that:

- the National Disability Insurance Agency continue to provide funding under the existing plan until the new plan is approved; and
- ensure that a plan review is carried out within 45 days of the review date set out in the existing plan.

Recommendation 11

3.138 The committee recommends, where a plan is not approved within 45 days of receipt by an National Disability Insurance Agency (NDIA) delegate, that:

- the NDIA immediately approve a typical supports package (TSP) for the participant as an interim measure; and
- the NDIA replace the TSP with an individualised plan no later than 45 days after the TSP is approved.

Recommendation 12

3.139 The committee recommends that all participants with complex support needs be immediately streamed to an National Disability Insurance Agency delegate to develop their plan and appropriate funding package.

Recommendation 13

3.145 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to prioritise access decisions, plan meetings and plan approvals for children with complex needs and/or an acquired disability.

Recommendation 14

3.153 The committee recommends that the National Disability Insurance Agency immediately implement a mechanism to allow participants to pay for transport out of core funding.

Executive summary

Planning is fundamental to the operation of the National Disability Insurance Scheme (NDIS). The plan sets out the goals of the NDIS participant and the funded supports that will assist the participant to realise those goals. In effect, the plan determines how the participant will experience the NDIS. Given the significance of the planning process, it is crucial that planning is effective, robust, and meets the needs of all NDIS participants.

It is therefore concerning that the committee has heard there are a number of significant issues with the operation and implementation of the NDIS—particularly in relation to process. It is troubling that many of these issues are not new, and have been raised in previous inquiries.

In light of these matters, the committee considers that urgent action must be taken to improve the operation of the NDIS, and in particular the planning process, to maximise choice and control for people with disability and ensure that NDIS participants are fully supported to achieve their goals.

Evidence presented to the committee throughout the inquiry indicates that more time is required to fully consider issues associated with the planning process. Further time is also required to consider the impact of recent government initiatives to improve the NDIS—several of which are in their trial stages. Consequently, the committee has decided to present this interim report, which contains 14 recommendations to improve the operation of the planning process and the NDIS more generally. Many of these are proposed as a means of addressing issues with the planning process in the immediate term, while initiatives to improve the planning process are implemented. The committee has also highlighted other areas that it will consider more closely in the coming months.

The committee emphasises that the issues raised in this report are not intended as a criticism of individuals involved in the planning process, who are often doing good work under very trying circumstances. Rather, the committee's focus has been on the planning process as a whole, and the recommendations are targeted at bringing about systemic improvements to help the NDIS realise its full potential.

Draft plans and joint planning

The committee heard that the planning process does not involve NDIS participants in a meaningful way. In particular, submitters were concerned that participants do not have the opportunity to review and alter their plan before it is approved, and often do not meet with, or speak to, the National Disability Insurance Agency (NDIA) officer with authority to approve their plan.

The committee considers that face-to-face meetings between participants and NDIA delegates should be an essential part of the planning process. Participants should be given all opportunities possible to communicate their goals and required supports,

and to challenge planning proposals that do not meet their needs. This is crucial to realising the principles of choice and control that underpin the scheme.

The committee notes that the NDIA recently trialled a 'joint planning' approach, where participants meet face-to-face with their Local Area Coordinator *and* the delegate with authority to approve their plan. The committee is pleased that the government proposes to roll out joint planning on a national basis from April 2020.

However, it is not clear that joint planning will be an adequate substitute for the provision of fully costed draft plans to participants. In this regard, the committee heard that the current approach to joint planning does not allow participants to review fully costed draft plans before they are approved. As such, the joint planning process may not, on its own, be sufficient to ensure that participants and representatives are adequately prepared for planning meetings and feel able to advocate for the supports and funding they need.

Consequently, the committee considers that—in addition to the introduction of joint planning—participants should be provided with fully costed draft plans ahead of planning meetings. This proposal was strongly supported by the majority of submitters to the inquiry, and has been previously recommended by the committee.

The review process and means to streamline it

At present, a full plan review is required for all changes to a participant's plan—even where those changes are minor or routine. The committee heard that this requirement is causing distress for participants, and may be limiting their ability to effectively advocate for reasonable and necessary supports. The committee also heard evidence that delays in review processes may be causing undue burden for participants, limiting their ability to access supports, and undermining the effective administration of the NDIS.

The committee strongly supports allowing participants to request reviews of only part of a plan and a requirement that reviews be completed within a specified timeframe. The committee also supports publishing (de-identified) settlement outcomes associated with review processes, as a means of increasing transparency and accountability for stakeholders.

Standardised language

Submitters indicated that the information disseminated by the NDIA is overly complex and bureaucratic, and that the NDIA often fails to use consistent language. The committee acknowledges that the NDIA is working to simplify the language it uses when communicating with stakeholders. However, evidence received during the inquiry suggests that communication issues persist and are creating challenges for people seeking to navigate an already complex scheme.

Training

The committee heard that additional training is necessary to ensure that all persons involved in the planning process understand the diverse experiences of NDIS

participants—particularly those with complex support needs, and to ensure that service delivery is consistent, effective and culturally appropriate.

Plan gaps

The committee heard that 'gaps' in plans may be limiting participants' ability to access necessary supports, limiting choice and control, and undermining the effective administration of the NDIS. The committee acknowledges that the NDIA has implemented enhancements to its internal processes which go some way to ensuring continuity of supports. However, evidence suggests that more is needed to ensure that participants are not left without funding for reasonable and necessary supports, and to ensure funding in participant plans remains appropriate.

First plan approvals

The committee heard that delays in approving first plans may be creating barriers to supports. The committee notes that the government announced an initiative to resolve delays in approving first plans for the early childhood cohort, and supports the implementation of a similar initiative for all NDIS participants.

Children with acquired disability and complex care needs

The committee heard that children with acquired disability and children with complex support needs are often underserved by the NDIS, and that approval delays may be limiting access to supports. The committee considers that a mechanism is needed to prioritise these cohorts in appropriate circumstances, to ensure that they are able to access supports as quickly as possible.

Transport

The committee heard that the current NDIS funding model may not be giving participants adequate access to transport services. The committee notes that work is in progress to increase funding for transport services, and to allow participants to use funding more flexibly. However, these measures may not be sufficient to ensure the NDIS meets the transport needs of participants in the short term.

Conclusion

The committee thanks all who participated in the inquiry by lodging submissions, giving testimony or expressing their views through correspondence. In particular, the committee acknowledges those NDIS participants who attended the committee's public hearings to share their experiences. The testimony of people with lived experience is crucial to identifying issues and making improvements to the NDIS.

The committee will give further consideration to the issues associated with the planning process in the coming months and will hold additional public hearings. The committee proposes to present a final report to the Parliament in 2020.

Chapter 1

Overview

- 1.1 The Joint Standing Committee on the National Disability Insurance Scheme (the committee) was established by resolution by the House of Representatives on 4 July 2019¹ and the Senate on 22 July 2019². The committee is composed of 5 Members and 5 Senators, and is tasked with reviewing:
 - (a) the implementation, performance and governance of the National Disability Insurance Scheme (NDIS);
 - (b) the administration and expenditure of the NDIS;
 - (c) such other matters in relation to the NDIS as may be referred to it by either House of the Parliament.
- 1.2 The committee is required to present an annual report to the Parliament on the activities of the committee during the year, in addition to reporting on any other matters it considers relevant.
- 1.3 The committee is also able to inquire into specific aspects of the Scheme. On 1 August 2019, the committee decided to undertake an inquiry into NDIS planning, with particular reference to:
 - (a) the experience, expertise and qualifications of planners;
 - (b) the ability of planners to understand and address complex needs;
 - (c) the ongoing training and professional development of planners;
 - (d) the overall number of planners relative to the demand for plans;
 - (e) participant involvement in planning processes and the efficacy of introducing draft plans;
 - (f) the incidence, severity and impact of plan gaps;
 - (g) the reassessment process, including the incidence and impact of funding changes;
 - (h) the review process and means to streamline it;
 - (i) the incidence of appeals to the AAT and possible measures to reduce the number;
 - (j) the circumstances in which plans could be automatically rolled-over;
 - (k) the circumstances in which longer plans could be introduced;
 - (l) the adequacy of the planning process for rural and regional participants;
 - (m) any other related matters.³

¹ *House of Representatives Votes and Proceedings*, No. 3, 4 July 2019, pp. 55–56.

² *Journals of the Senate*, No. 4, 22 July 2019, pp. 134–135.

³ The committee is also currently undertaking an inquiry into Supported Independent Living.

Conduct of the Inquiry

- 1.4 The committee published 153 submissions to the inquiry from individuals and organisations. Submissions are listed in Appendix 1.
- 1.5 The committee also conducted 6 public hearings:
- 8 October 2019 in Brisbane
 - 9 October 2019 in Sydney
 - 28 October 2019 in Hobart
 - 7 November 2019 in Melbourne
 - 19 November 2019 in Adelaide
 - 21 November 2019 in Canberra
- 1.6 In addition to a formal program of witnesses, the committee also heard evidence during town-hall sessions. Transcripts from hearings, together with submissions and answers to questions on notice, are available on the committee's website.⁴ Witnesses who appeared at the hearings are listed in Appendix 2.

The need for an interim report

- 1.7 The evidence provided to the committee throughout this inquiry, coupled with recent government announcements and the Tune Review, indicate that more time is required to present a properly considered report on this very important aspect of the NDIS experience.
- 1.8 However, the committee has decided to present an interim report containing 14 recommendations directed to the government to improve the planning process. The committee will continue to consider the evidence provided thus far and hold further hearings in 2020 before presenting a final report to Parliament.

Structure of the Report

- 1.9 This report is comprised of 4 chapters, as follows:
- Chapter 1 (this chapter) provides general information about the conduct of the inquiry.
 - Chapter 2 provides background to the NDIS and an overview of the planning process, highlights some of the key activities undertaken by the National Disability Insurance Agency (NDIA) and other relevant organisations since the committee's last report, and outlines some issues relating to NDIS planning that were raised during the 45th Parliament.
 - Chapter 3 examines the areas of planning where the committee has made recommendations to improve the operation of the scheme.

⁴ See https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/GeneralIssues/Public_Hearings.

- Chapter 4 highlights other issues that the committee will continue to examine in the coming months.

Note on terminology and references

1.10 References to submissions in this report are to individual submissions received by the committee and published on the committee's website. References to Committee Hansard are to official transcripts, unless otherwise indicated.

Acknowledgments

1.11 The committee notes that many of the issues raised by witnesses and submitters have been matters of concern for some time, and in many instances, this is not the first time they have been brought to the committee's attention. The committee thanks all those who contributed to the inquiry by lodging submissions, providing additional information, or expressing their views through correspondence. The committee acknowledges those who gave their time to attend the public hearings and give evidence.

Chapter 2

Background

Introduction

2.1 This chapter provides a background to the NDIS and an overview of the planning process, highlights some of the key activities undertaken by the National Disability Insurance Agency (NDIA) and other relevant organisations since the committee's last report, and outlines a number of issues relating to NDIS planning that were raised during the 45th Parliament.

Background to the National Disability Insurance Scheme

2.2 The National Disability Insurance Scheme (NDIS) provides support to people with disability, their families and carers. It is jointly governed and funded by Federal, state and territory governments. The NDIS became operational on 1 July 2013, with the commencement of trial sites. From 1 July 2016, the NDIS began the transition to full scheme on a geographic or age basis. The transition to full scheme is guided by Bilateral Agreements between the Commonwealth, and State and Territory governments.¹

2.3 The NDIS is a new model of funding and delivering supports for persons with disability. It is insurance-based, and moves from the previous system of block funding to a fee-for-service, market-based approach. It is based on the premise that people with disability each have different support needs and should be able to exercise choice and control in relation to their supports.

2.4 The main component of the NDIS is individualised packages of supports to eligible people with disability. When fully rolled out, the NDIS is expected to serve over 500 000 people aged under 65 who have a permanent and significant disability, with funding for supports and services.²

The National Disability Insurance Agency

2.5 The NDIA is an independent statutory agency responsible for the governance and administration of the NDIS. Its core functions include delivering the NDIS in a way that maximises choice and control for participants and promotes access to high quality supports, and managing, advising and reporting on the financial sustainability of the scheme.³

¹ See NDIS, *Intergovernmental agreements*, <https://www.ndis.gov.au/about-us/governance/intergovernmental-agreements> (accessed 15 November 2019).

² The Hon. Stuart Robert (Minister for the National Disability Insurance Scheme), 'Future of the NDIS secured for all Queenslanders', *Media release*, 10 July 2019, <https://ministers.dss.gov.au/media-releases/5001> (accessed 11 July 2019).

³ NDIS Act, section 118.

Legislative framework for the NDIS

- 2.6 The NDIS is established pursuant to the *National Disability Insurance Scheme Act 2013* (NDIS Act). The NDIS Act also establishes the NDIA, and sets out the agency's functions and governance arrangements.⁴
- 2.7 Relevantly, the NDIS Act sets out the objectives of the NDIS, which include:
- supporting the independence and social and economic participation of people with disability;
 - providing reasonable and necessary supports, including early intervention supports, for participants;
 - enabling people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
 - facilitating the development of a nationally consistent approach to accessing, planning and funding of supports for people with disability; and
 - promoting the provision of high quality and innovative supports for people with disability.⁵
- 2.8 The Act further provides for: how a person may become a participant in the NDIS;⁶ how a participant's plan is prepared and reviewed, including how the NDIA approves funding for supports;⁷ how a provider can become a registered provider of supports;⁸ and the processes for reviewing decisions.⁹

National rollout of the NDIS

- 2.9 National rollout of the NDIS began on a progressive basis from July 2014, with the majority of jurisdictions beginning the transition in July 2016. It is expected that the full rollout of the NDIS will be completed by July 2020.
- 2.10 As of 30 September 2019, all jurisdictions except WA have transitioned to full scheme. The NDIS is providing services to over 314 000 people across all jurisdictions, as outlined in the table below.

⁴ NDIS Act, Chapter 6, Parts 1, 2, 3, and 4. These provisions cover the CEO of the NDIA, and the NDIA's Board, Independent Advisory Council and Actuaries.

⁵ NDIS Act, section 3. Other relevant objectives include protecting people with disability from experiencing harm, and giving effect to Australia's international human rights obligations as they relate to people with disability.

⁶ NDIS Act, Chapter 3, Part 1.

⁷ NDIS Act, Chapter 3, Part 2.

⁸ NDIS Act, Chapter 4, Parts 3 and 3A.

⁹ NDIS Act, Chapter 4, Part 6.

Table 2.1 Number of people benefiting from the NDIS compared to bilateral estimates as at 30 September 2019

	Number of people benefiting from the NDIS as of 30 June 2019 ¹⁰	Number of people expected to benefit from the NDIS when fully rolled out ¹¹
New South Wales	108 261	141 957
Victoria	84 049	105 324
Queensland	55 577	91 217
South Australia	29 538	32 284
Tasmania	7 027	10 587
Western Australia	20 165	39 097
Australian Capital Territory	6 988	5 075
Northern Territory	2 622	6 545
Total	314 247	432 086

2.11 In 2019–20, the Australian Government has budgeted for expenditure of \$16.3 billion on supports for NDIS participants. Government proposes to spend \$20.9 billion in 2020–21, following the full rollout of the scheme. This is comparable to the expected cost of \$22 billion for the scheme.¹² The Australian Government has published a range of factsheets for participants and providers that set out key elements of the scheme.¹³

Background to NDIS Planning

2.12 This section provides an overview of NDIS planning, including the principles that guide the planning process, a description of the plan, and an outline of the planning process and plan review. This reflects the committee's understanding

¹⁰ Data sourced from the NDIS website for participant numbers as of 30 September 2019. The national total reflects the national Quarterly Performance Report, while the total for each state and territory reflects the Performance Report for the state or territory. See NDIS, *Quarterly Reports*, <https://www.ndis.gov.au/about-us/publications/quarterly-reports> (accessed 15 November 2019).

¹¹ Data sourced from bilateral agreements between the Commonwealth and individual jurisdictions. The ACT is the only jurisdiction currently with more people benefiting from the NDIS than expected.

¹² Australian Government, *Portfolio Budget Statements 2019-20: Budget Related Paper No. 1.15A – Social Services Portfolio*, p. 139; Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs*, October 2017, p. 15.

¹³ See NDIS, *Booklets and factsheets*, <https://www.ndis.gov.au/about-us/publications/booklets-and-factsheets> (accessed 22 November 2019).

of the NDIS planning process, based on information published by the NDIA and relevant legislation and supplemented evidence given to the committee during the inquiry.

- 2.13 Each NDIS participant must have a plan, prepared in conjunction with the participant and approved by the NDIA. The planning process seeks to identify participants' goals and to determine the informal, community, mainstream and NDIA funded supports needed to realize those goals.¹⁴
- 2.14 The NDIS Act sets out principles relating to plans. Relevantly, the Act provides that that the preparation, review and replacement of a participant's plan, and management of funding for supports, should so far as reasonably practicable:
- be individualised;
 - be directed by the participant;
 - where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant;
 - be underpinned by the right of the participant to exercise control over his or her own life; and
 - maximise the participant's choice and independence.¹⁵
- 2.15 These principles are set out in addition to the general objectives and principles for the NDIS (outlined above).
- 2.16 The NDIA's operational guidelines further state that the planning process should result in the NDIA gaining a 'rich understanding of the participant's support needs'. The guidelines emphasise that, to maximise choice and control, process should be led by the participant and use goal-based planning and strength-based approaches to increase participant independence.¹⁶

What is a plan

- 2.17 According to the NDIA's operational guidelines, a plan is a document which outlines the environmental and personal context of an NDIS participant, along with the specific supports which will be provided to or funded for the participant to enable them to effectively move towards their personal goals, objectives and aspirations.¹⁷
- 2.18 The plan must include:

¹⁴ NDIA, *Planning Operational Guideline – Overview*, <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-overview#1> (accessed 26 November 2019).

¹⁵ NDIS Act, section 31.

¹⁶ NDIA, *Planning Operational Guideline – General matters relating to planning*, <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-general-matters-relating-planning> (accessed 22 November 2019).

¹⁷ NDIA, *Planning Operational Guideline – General matters relating to planning*.

- a **statement of goals and aspirations**.¹⁸ This must specify the participant's goals, objectives and aspirations, as well as the environmental and personal context of the participant's living (including living arrangements, informal and other community supports and social and economic participation).
 - The statement of goals and aspirations is prepared by the participant. The NDIA must have regard to the statement of goals and aspirations when deciding whether to include a support in a plan.¹⁹ Before including any support in a plan, the NDIA must be satisfied that the support will assist the participant to pursue the goals, objectives and aspirations included in the statement of goals and aspirations;²⁰
- a **statement of participant supports**.²¹ This must specify (among other matters) the general supports that will be provided for or in relation to the participant, the reasonable and necessary supports that will be funded by the NDIS, and how funding for the supports is to be managed.²² When approving a statement of participant supports, the NDIA must have regard to a range of matters set out in the NDIS Act, including the participant's statement of goals and aspirations.²³
 - The statement of participant supports is prepared with the participant and approved by the NDIA. The NDIA must comply with the statement of participant supports.²⁴

2.19 The statement of participant supports will also set out the date by which, or the circumstances in which, the NDIA must review the plan, and how the funding of supports under a participant's plan will be managed.²⁵

Planning process

2.20 Under the NDIS Act, when a person becomes a participant the NDIA must facilitate the preparation of a plan in accordance with the NDIS Rules.²⁶ Where the rules do not require the NDIA to commence facilitating the preparation of

¹⁸ NDIS Act, subsection 33(1).

¹⁹ NDIS Act, paragraph 35(5)(a).

²⁰ NDIS Act, paragraph 34(1)(a).

²¹ NDIS Act, subsection 33(2).

²² NDIS Act, subsection 33(2).

²³ NDIS Act, subsection 33(5).

²⁴ NDIS Act, section 39.

²⁵ NDIS Act, subsection 33(2).

²⁶ NDIS Act, subsections 32(1) and (2). The NDIS rules set out when the NDIA must commence facilitating the preparation of plans for participants in specified jurisdictions and cohorts. See, for example, National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—Australian Capital Territory) Rules 2014 [F2014L00909].

a plan within a prescribed period or in prescribed circumstances, the NDIA must facilitate the preparation of the plan as soon as reasonably practicable.²⁷

- 2.21 NDIA guidance states that when a person becomes an NDIS participant, an NDIA representative will contact the person to arrange a planning meeting.²⁸ The representative may be an NDIS Planner, Local Area Coordinator (LAC) or Early Childhood Early Intervention (ECEI) Coordinator.²⁹
- 2.22 At its public hearing in Canberra, the committee heard that originally the role of the LAC was to provide information to potential participants, but now the LACs are – in approximately 80 per cent of instances – doing the majority of the planning or plan building for participants.³⁰ The NDIA confirmed this, noting that:

In [the trial phase of the NDIS] we didn't have LACs to speak of, except some like positions within the agency. But when we started to look at our model as we scaled up, we acknowledged that around 80 per cent of participants fall into a category that we call 'general' or 'supported'. They don't have the same complex needs that perhaps the other 20 per cent of participants may have.

...

[B]ecause of the way that LACs are nestled within the communities and understand the connections between the community and mainstream and often had relationships with some of these participants through other means, they were best placed to deliver the general and supported preplanning and...develop the information that would generate a plan. Then what happens is that the plan is pushed through the system to the agency delegate, who then makes the decision. So the LAC planner isn't the delegate.³¹

- 2.23 Before the planning meeting (also referred to as the 'planning and assessment conversation'), the NDIA will review the participant's access request form, any available evidence of disability (for example, reports from clinicians and other medical practitioners), the statement of goals and aspirations, and any other

²⁷ NDIS Act, subsection 32(3).

²⁸ NDIA, *Factsheet: Developing your NDIS plan*, <https://www.ndis.gov.au/about-us/publications/booklets-and-factsheets#fs-participants> (accessed 26 November 2019).

²⁹ The committee understands that LACs are community bodies that work with participants aged seven years or older to develop and implement plans, and provide support to help participants realise their goals. LACs also help people with disability, families and carers to build networks and access support and services. ECEI Coordinators play a similar role in relation to participants and persons with disability aged six years and younger. LACs and ECEI Coordinators are contracted by the NDIA, but are not NDIS delegates. They cannot approve plans. By contrast, NDIA Planners are employed directly by the NDIA, and hold delegations to approve plans.

³⁰ Mr Kevin Andrews MP, *Proof Committee Hansard*, 21 November 2019, pp. 33–34.

³¹ Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 November 2019, p. 34.

information provided by the participant. By reviewing existing information, the NDIA seeks to reduce the overall assessment burden for the participant by minimising the number of times that information needs to be provided.³²

- 2.24 During the planning meeting, the NDIA and the participant will discuss the participant's goals and aspirations, and identify any specific supports which would assist the participant to achieve them. The NDIA will also talk to the participant about their preferred option for managing the funding of supports under their plan.³³ The NDIA's website notes that planning meetings are conducted either in person or over the phone between the participant and the NDIA representative.³⁴ Participants are also able to bring a family member, friend or advocate (or anyone else) to the planning meeting.³⁵
- 2.25 Generally, the planning meeting (or meetings, where necessary) will be based on the participant's statement of goals and aspirations. However, if a participant has not prepared a statement of goals and aspirations ahead of the planning meeting, the NDIA can support the participant to prepare their statement as part of the planning meeting.³⁶
- 2.26 The NDIA will use information gathered during the planning meeting, as well as other information relevant to the participant, to develop and approve the statement of participant supports. In preparing the statement, the NDIA may also request that the participant, or another person, provide additional information that is reasonably necessary for the purposes of preparing the statement. The NDIA may also request that the participant undergo additional assessments and/or psychiatric or medical assessments.³⁷ Where the NDIA has requested that the participant undergo assessment or examination, the NDIA will provide assistance, including financial assistance where appropriate.³⁸
- 2.27 The NDIA must decide whether or not to approve the statement of participant supports as soon as reasonable practicable, including what is reasonably

³² NDIA, *Planning Operational Guideline – Performing a support needs assessment*, <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-performing-support-needs-assessment> (accessed 26 November 2019).

³³ NDIA, *Planning Operational Guideline – Performing a support needs assessment*.

³⁴ NDIA, *How the planning process works*, <https://www.ndis.gov.au/participants/how-planning-process-works> (accessed 26 November 2019).

³⁵ NDIA, *What you should bring to your planning meeting*, <https://www.ndis.gov.au/participants/creating-your-plan/planning-meeting-checklist> (accessed 22 November 2019).

³⁶ NDIS, *Planning Operational Guidelines – Performing a support needs assessment*.

³⁷ NDIS Act, section 36.

³⁸ NDIS Act, section 6.

practicable having regard to any requests for information, examination or assessment that have been made by the NDIA.³⁹

- 2.28 A participant's plan will come into effect when the NDIA has received the statement of goals and aspirations and has approved the statement of supports. The plan ceases to be in effect when it is replaced by another plan, or when the person to whom the plan relates ceases to be a participant.⁴⁰
- 2.29 The NDIS Act requires the NDIA to provide a copy of a participant's plan to the participant within seven days of the plan taking effect.⁴¹ The NDIA states that the plan will be available via the NDIS myplace portal about 24 hours after it has been approved. The participant will also receive a copy of the plan in person or by mail in the participant's preferred format and language.⁴²

Plan review

- 2.30 NDIS plans are routinely reviewed by the NDIA as part of the planning cycle. Plans may also be reviewed on an *ad hoc* basis following a request from a participant or on the NDIA's initiative. According to the NDIA, the plan review is an opportunity to check whether supports are working effectively and are helping the participant to realise their goals.⁴³
- 2.31 A **scheduled plan review** takes place as part of the normal planning cycle.⁴⁴ As noted above, the statement of participant supports must specify the date by which, or the circumstances in which, the NDIA must be review the plan.⁴⁵
- 2.32 The NDIA's operational guidelines state that the NDIA generally ensures that plans have a minimum duration of 12 months, and will specify a plan review date of four to six weeks before the plan comes to an end. However, in some cases the NDIA may specify a longer or shorter plan review date to accommodate the preparation of a new plan at a time that is more appropriate for the participant.⁴⁶

³⁹ NDIS Act, subsection 33(4).

⁴⁰ NDIS Act, section 37.

⁴¹ NDIS Act, section 38.

⁴² NDIA, *Receiving your approved plan*, <https://www.ndis.gov.au/participants/creating-your-plan/receiving-your-approved-plan> (accessed 26 November 2019).

⁴³ NDIA, *Reviewing your plan and goals*, <https://www.ndis.gov.au/participants/reviewing-your-plan-and-goals> (accessed 26 November 2019).

⁴⁴ NDIS Act, subsection 48(5). The NDIA must conduct a review of a participant's plan before the plan's review date and in the circumstances, if any, specified in the plan.

⁴⁵ NDIS Act, paragraph 33(2)(c).

⁴⁶ NDIA, *Planning Operational Guidelines – Reviewing and changing a participant's plan*, <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-reviewing-and-changing-participants-plan> (accessed 26 November 2019).

- 2.33 An **unscheduled plan review** may take place where the NDIA decides to review the plan at the participant's request, or where the NDIA decides to conduct a plan review on its own initiative.
- 2.34 A participant, or their nominee, may request that the NDIA conduct a review of their plan at any time.⁴⁷ This generally occurs when a participant's circumstances have changed, and their current plan no longer meets their needs. Where a participant makes such a request, the NDIA must decide whether to conduct the review within 14 days of receiving the request. If the NDIA decides to conduct the review, it must commence the review within 14 days of making the decision.⁴⁸
- 2.35 The NDIA may also decide to conduct a review of the participant's plan at any time.⁴⁹ The operational guidelines note that it may be appropriate for the NDIA to conduct a review of this kind where there are, or are expected to be, significant changes to the participant's circumstances, or a significant event has occurred. The NDIA may also decide to initiate a review of a plan where a participant changes their statement of goals and aspirations, or in light of information obtained during the NDIA's feedback and monitoring activities.⁵⁰
- 2.36 Where the NDIA conducts a review of a participant's plan, this will involve the NDIA developing a new plan for the participant, having regard to the same matters and using the same approach employed when preparing the current plan. However, it is noted that reviews of a participant's plan will vary in length and complexity depending on the circumstances of the participant, and the circumstances that triggered the review.⁵¹
- 2.37 Similarly to developing a plan, the NDIA may request additional information from a participant, or request that the participant undergo assessments and/or examinations, as part of the plan review process.⁵²

Varying a plan

- 2.38 Relevantly, a participant's plan cannot be varied after it comes into effect. It may only be replaced following a plan review process.⁵³

⁴⁷ NDIS Act, subsection 48(1).

⁴⁸ NDIS Act, subsections 48(2) and (3).

⁴⁹ NDIS Act, subsection 48(4).

⁵⁰ NDIA, *Planning Operational Guidelines – Reviewing and changing a participant’s plan*.

⁵¹ NDIA, *Planning Operational Guidelines – Reviewing and changing a participant’s plan*.

⁵² NDIS Act, section 50.

⁵³ NDIS Act, section 37.

Internal and external review

- 2.39 It is important to distinguish plan reviews (both scheduled and unscheduled) from internal reviews of *decisions* under the NDIS Act.
- 2.40 Plan review is a process by which the NDIA re-assesses a participant's support needs, and prepares a new plan on behalf of the participant.
- 2.41 By contrast, internal review involves an NDIA officer (who was not involved in the original decision) considering the factual, legal and policy aspects of a decision and determining if the decision was correct or preferable.⁵⁴ A number of decisions under the NDIS Act may be subject to internal review. Relevantly, these include a decision not to approve a participant's statement of supports, and a decision not to conduct an unscheduled plan review.⁵⁵
- 2.42 Where a person is not satisfied with the outcome of an internal review process, they may seek further review of the decision by the Administrative Appeals Tribunal.⁵⁶

NDIA Activities

- 2.43 This section briefly lists some of the NDIA's key activities since the committee tabled its last progress report in March 2019.

Pathways Review

- 2.44 In 2017, the NDIA commenced the NDIS Pathways Review (the Review), to address concerns from participants, families, carers and providers that the NDIS was not meeting their expectations. In particular, the Review was a response to stakeholder concerns that the use of telephone planning did not promote the development of an informed relationship about a person's needs and requirements.
- 2.45 Throughout the Review, the NDIA heard from more than 300 participants, providers and other stakeholders. Generally, feedback was that participants wanted more transparency and to feel engaged, understood and supported throughout their engagement. Participants also emphasised the need for easy-to-understand, clear and accessible communications.
- 2.46 According to the NDIA's submission to the current inquiry, key improvements arising out of the Review include:
- three specific pathways: the NDIS Participant Pathway, Complex Support Needs Pathway, and Early Childhood Early Intervention (ECEI) Pathway;
 - streams for psychosocial disability and hearing, to deliver targeted support and tailor the participant experience to specific disability needs; and

⁵⁴ NDIA, *Planning Operational Guidelines – Reviewing and changing a participant's plan*.

⁵⁵ NDIS Act, section 99. Section 100 sets out the process for the internal review of decisions.

⁵⁶ NDIS Act, section 103.

- service enhancements to meet the communication and engagement needs of people from diverse backgrounds or areas, including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse peoples, remote and very remote communities, and people who identify as LGBTIQ+.⁵⁷
- 2.47 The submission also notes that by June 2019, baseline service improvements to the NDIS Participant Pathway were rolled out nationally, and states that these improvements include:
- a stronger focus on community, government, informal and employment supports during pre-planning, to assist participants, families and carers;
 - a consistent point of contact for participants;
 - enhanced planning communication products in a variety of formats;
 - face-to-face pre-planning and plan implementation meetings at the discretion of the participant; and
 - improved linkages between NDIA planners and LACs, and improved training for NDIA planners and LACs.⁵⁸
- 2.48 The NDIA has also published an update on progress as at June 2019, which broadly supports their submission to the inquiry.⁵⁹ Relevantly, the update also refers to the rollout of additional disability training for NDIA staff; improved support coordination; and the rollout of joint planning meetings.

Joint planning soft launch

- 2.49 Many submissions to the inquiry recommended the introduction of draft plans in the planning process (or noted instances where draft plans would be useful), to ensure participants have meaningful input during the planning process and to understand their approved plans.⁶⁰
- 2.50 The NDIA's submission states that the NDIA understands the importance for participants to have meaningful input into the planning process, and of ensuring that participants understand their approved plans. The submission notes that this reflects consistent feedback from the pathway review.
- 2.51 The submission further notes that the joint planning meeting is a key example of how the NDIA is working towards a collaborative and transparent planning experience. In this respect, the submission states that since 6 May 2019, the NDIA has been conducting a 'soft launch' of joint planning meetings in southern Adelaide. The joint planning soft launch began with four LACs and

⁵⁷ NDIA, *Submission 20*, pp. 2–3.

⁵⁸ NDIA, *Submission 20*, p. 3.

⁵⁹ See NDIA, *Pathway reform – what's happening in 2019*, <https://www.ndis.gov.au/about-us/ndis-pathway-reform/pathway-reform-whats-happening-2019> (accessed 22 November 2019).

⁶⁰ See, for example, National Rural Health Alliance, *Submission 91*, p. 19; Allied Health Professions Australia (AHPA), *Submission 74*, [pp. 7–8]; *Submission 9*, p. 1.

four NDIA planners at the NDIA St Mary's and partner Mission Australia's Clovelly Park sites. The submission explains the soft launch process and associated proposals for joint planning as follows:

In the joint planning meeting, a participant engages with their LAC and assigned NDIA planner delegate to discuss their NDIS plan before it is finalised. This occurs following the pre-planning meeting and prior to plan implementation. This meeting gives the participant an opportunity to ask questions to better understand their NDIS plan and includes supports before the plan is approved. In most cases, the participant will leave the joint planning meeting with an approved plan and will be able to access their supports immediately.

This work builds on previous joint planning trials, which took place during the 2018 Pilot 1 (new plans) and Pilot 2 (plan reviews) as part of service improvements for the new participant pathway. This work also builds on the roll out of service improvements to the new participant pathway, particularly the delivery of plan alignment and plan implementation meetings, and stronger connections between LACs and planners. The NDIA will roll out joint planning more broadly, following a detailed evaluation of the 'soft launch'. The rollout of the joint planning process will be supported by the introduction of an Appointment Booking Tool that will electronically capture and schedule the required meetings between the participant, their LAC and NDIA planner delegate.⁶¹

2.52 The NDIA provided further detail on the joint planning process at the committee's public hearing in Adelaide:

Basically, the joint planning in South Australia involves the local area coordinator and the participant as well as the [NDIA] delegate who approves the plan. The process involved is that the local area coordinator initially has a conversation with the participant as part of the pre-planning. They build the plan and then the local area coordinator and the delegate come together and agree on what's to be included in the plan and what needs to be done. Once they've formalised that, they ask the participant to come to what we call a joint plan. It's a three-way conversation with the participant. The participants also have a choice to bring their carers, if need be. Anyone who supports them can come into that meeting. Then they have the local area coordinator and the delegate.

Part of the process is to give them a working version of the plan. We say, 'This is what's in your plan. This is what's included in the plan. Are you happy with the plan? Is there anything you'd like changed?' If there are any changes, if they are able to make the changes on the spot, the delegate will make those changes and approve the plan. As soon as the plan is approved the delegate usually leaves the meeting. The local area coordinator will continue the conversation with the participant, explaining what's in the plan and how to use the plan. That's the remit of what we did in South Australia.⁶²

⁶¹ National Disability Insurance Agency, *Submission 20*, p. 3.

⁶² Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 53.

2.53 The NDIA stated that it offered joint planning to 347 participants, and held joint planning meetings with 223 participants.⁶³ It further noted that 203 plans were approved at the joint planning meetings, representing around 91 per cent of the plans that were considered as part of the joint planning soft launch.⁶⁴

Minister's announcement

2.54 On 14 November 2019, the Minister for the NDIS, the Hon Stuart Robert MP, announced the government's plan to improve the NDIS and to ensure its future sustainability.⁶⁵ According to the minister, the plan has been developed with advice from the NDIS and the Department of Social Services (DSS), and has six core elements:

- quicker access and quality decision making;
- increased engagement and collaboration;
- market innovation and improved technology;
- a financially sustainable scheme;
- equitable and consistent decisions; and
- improving long-term outcomes.

2.55 Relevantly, the Australia Government's plan includes a number of initiatives to improve NDIS planning. For example, the minister announced that:

- from April 2020, the NDIA will commence the national rollout of draft planning meetings, and the provision of draft plan summaries;
- from July 2020, the government aims to remove the distinction between core and capacity building funding, so that participants and their families can use plan funding more flexibly on supports that meet their needs; and
- the government remains committed to finalising the review of the NDIS Act and legislating changes for the commencement of the NDIS Participant Service Guarantee in July 2020 (see below).

2.56 The Minister also announced that he will continue to work with state and territory governments to monitor the implementation of decisions made by the Disability Review Council in relation to transport 'to ensure they provide clarity and good outcomes for NDIS participants'.⁶⁶

⁶³ Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 53. Mr Raghunathan noted that 'not all of [the participants] wanted to be part of the joint planning process, for various reasons'.

⁶⁴ Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 53.

⁶⁵ The Hon Stuart Robert MP, *The NDIS Plan*, speech delivered at the National Press Club, 14 November 2019, <https://ministers.dss.gov.au/speeches/5266> (accessed 22 November 2019).

⁶⁶ The Hon Stuart Robert MP, *The NDIS Plan*, speech delivered at the National Press Club, 14 November 2019.

Review of the NDIS Act – Tune Review

- 2.57 The Australian Government has promised to develop an NDIS Participant Service Guarantee, to support positive participant experiences with the NDIS. The Guarantee will set new standards for the time it takes for key steps in the NDIS process. This means that there will be shorter, agreed timeframes for people to receive a decision on whether they will be covered by the NDIS, to receive an NDIS plan, and to have a plan reviewed. A particular focus of the Guarantee is participants needing specialist disability accommodation and assistive technology. The review will complement work being implemented by the NDIA to improve planning.
- 2.58 To develop the Guarantee, the government commissioned a review of the NDIS Act and associated laws, led by Mr David Tune AO PSM. The review will consider what changes may be needed to the legislative framework for the NDIS to support the Guarantee and to set new standards into law. This may involve amendments to the NDIS Act and associated legislation, but will not change the design or intent of the NDIS.
- 2.59 Government held public consultation on the review from 26 August 2019 to 31 October 2019. People with disability, family members, carers, advocates and providers from around Australia shared experiences and ideas in community workshops, the online survey and submissions.⁶⁷
- 2.60 Mr Tune is expected to hand down recommendations by the end of 2019, to support the proposed rollout of the Guarantee from 1 July 2020.⁶⁸

Disability Reform Council Activities

- 2.61 The COAG Disability Reform Council (the Council) provides a forum for member governments to discuss matters of mutual interest and progress key national reform in disability policy including the NDIS. The Council oversees implementation of the NDIS, as well as a broad range of reforms implemented through the National Disability Agreement and National Disability Strategy to support people with disability, their families and carers.⁶⁹

⁶⁷ Information regarding the review process, including an overview of the review, a copy of the discussion paper, public submissions, and information regarding community workshops, may be viewed on the website of the Department of Social Services: <https://engage.dss.gov.au/review-of-the-ndis-act-and-the-new-ndis-participant-service-guarantee/> (accessed 19 November 2019).

⁶⁸ Australian Government, Department of Social Services, *2019 review of the NDIS Act and the new NDIS Participant Service Guarantee*, <https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability-national-disability-insurance-scheme/2019-review-of-the-ndis-act-and-the-new-ndis-participant-service-guarantee> (accessed 19 November 2019).

⁶⁹ Australian Government, Department of Social Services, *Disability Reform Council*, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/programmes-services/government-international/disability-reform-council> (accessed 22 November 2019).

- 2.62 The Council is chaired by the Minister for the NDIS, and consists of state ministers within disability and treasury portfolios, as well as representatives from the Australian Local Government Association.⁷⁰
- 2.63 In its last progress report, this committee identified a number of actions relating to the NDIS which were agreed to by the Council between 1 July 2017 and 31 December 2019.⁷¹ According to its reports, the Council has since:
- welcomed the incoming Commonwealth Minister for the NDIS, the Hon Stuart Robert MP, as Chairperson of the Council;⁷²
 - agreed to a range of disability-related health supports that will be provided through the NDIS.⁷³ The Council also circulated a fact sheet which clarifies which health supports are, and are not, funded through the NDIS, and how funding is to be provided;⁷⁴
 - agreed to the Hospital Discharge Delay Action Plan, which will promote timely discharge of participants from public hospitals;⁷⁵
 - discussed progress and next steps on the proposed establishment of an NDIS Reserve Fund.⁷⁶ The Council agreed that actuarial advice on a Reserve Fund will be provided to states and territories by the end of October 2019;⁷⁷
 - agreed to an approach to improve the access and experience for NDIS participants with psychosocial disabilities, and to address interface issues between the NDIS and mainstream mental health systems;⁷⁸
 - agreed that the NDIA will introduce Justice Liaison Officers in each jurisdiction, to deliver a coordinated approach to supporting NDIS participants in youth and adult justice systems;⁷⁹

⁷⁰ Australian Government, Department of Social Services, *Disability Reform Council*.

⁷¹ Joint Standing Committee on the National Disability Insurance Scheme, *Progress Report*, March 2019, pp. 14–15.

⁷² Disability Reform Council, *Communique*, 28 June 2019, p. 1.

⁷³ Disability Reform Council, *Communique*, 28 June 2019, p. 1.

⁷⁴ Disability Reform Council, *Health related supports fact sheet*, 28 June 2019. These measures build on arrangements agreed to in late 2018: Disability Reform Council, *Communique*, 10 December 2018.

⁷⁵ Disability Reform Council, *Communique*, 28 June 2019, p. 1.

⁷⁶ Disability Reform Council, *Communique*, 28 June 2019, p. 2.

⁷⁷ Disability Reform Council, *Communique*, 9 October 2019, p. 2. The Council noted the development and design of a Reserve Fund will be accelerated for consideration when the Council next meets.

⁷⁸ Disability Reform Council, *Communique*, 9 October 2019, p. 1. The Council welcomed the establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs, noting that this would be developed with states and territories.

⁷⁹ Disability Reform Council, *Communique*, 9 October 2019, p. 1. The Council agreed that targeted resources and training will be developed and implemented to improve coordination of supports for participants interacting with the justice system.

- endorsed an approach to improve the provision of transport services under the NDIS, including interim measures to increase transport funding for participants who are significant users of taxi subsidy schemes;⁸⁰
- requested that implementation of an integrated and holistic framework for critical supports be expedited, and that further refinement of the framework be undertaken by the NDIA, states and territories;⁸¹
- agreed to work collaboratively on implementation of the Information, Linkages and Capacity Building (ILC) Strategy and grant programs, to review the allocation of funding, monitor risks and implement mitigation strategies, and ensure greater local knowledge;⁸²
- agreed to consider amendments to the Specialist Disability Accommodation (SDA) Pricing and Payments Framework and SDA Rules to bring the rules into line with regulatory best practice, clarify policy settings and afford SDA participants greater flexibility in their choice of living arrangements;⁸³ and
- agreed to ongoing discussions to ensure and report on the long-term financial sustainability of the NDIS, with a proposal to be considered at the Council's next meeting.⁸⁴

Productivity Commission Report

2.64 In the Heads of Agreement between the Commonwealth, State and Territory governments on the NDIS, it was agreed that the Productivity Commission (the Commission) would undertake a review of NDIS costs in 2017, to inform the final design of the full scheme prior to its commencement.

2.65 On 20 January 2017, the (then) Treasurer, the Hon Scott Morrison MP, requested that the Commission undertake a review of NDIS costs.⁸⁵ The terms of reference required the Commission to address a number of matters in the Heads of Agreement for the NDIS, and to consider:

- Commonwealth and state funding and governance arrangements for the NDIS, including financial contributions and risk-sharing;
- the interaction with, and role of, other services in meeting reasonable and necessary support for people with severe and profound disability; and

⁸⁰ Disability Reform Council, *Communique*, 9 October 2019, p. 1.

⁸¹ Disability Reform Council, *Communique*, 9 October 2019, p. 1.

⁸² Disability Reform Council, *Communique*, 9 October 2019, pp. 1. The Council also agreed to monitor the roll-out of the 2015 ILC framework and to consider the roll-out at its next meeting.

⁸³ Disability Reform Council, *Communique*, 9 October 2019, p. 2.

⁸⁴ Disability Reform Council, *Communique*, 9 October 2019, p. 2.

⁸⁵ The Hon Scott Morrison MP (Treasurer) and the Hon Christian Porter MP (Minister for Social Services), *Media statement: Review of the National Disability Insurance Scheme Costs*, 20 January 2017.

- whether there are any issues associated with the scheme's design, including the application of market and insurance principles, in ensuring the best possible outcomes for persons with severe and profound disability.⁸⁶
- 2.66 The Commission delivered its final report on 19 October 2017.⁸⁷
- 2.67 The Productivity Commission emphasised that good planning processes are essential for the success of the NDIS and its long-term sustainability, noting:
- the challenge for the planning process is finding the right balance between individualisation and good outcomes for participants on the one hand, and ensuring equity among participants and the financial sustainability of the scheme on the other.⁸⁸
- 2.68 However, the Commission noted that as at October 2017 the planning process was not operating well, and was often failing to meet participants' needs. In this respect, the Commission noted that:
- planning conversations with scheme participants are said to be rushed and superficial. Most plans are prepared by phone, which limits engagement with participants and can mean that planners do not get the 'full picture';
 - the planning process is not clear, transparent or accessible, and processes are not sufficiently inclusive or flexible to accommodate differing needs, particularly for participants with complex needs and participants from culturally and linguistically diverse (CALD) backgrounds; and
 - there is variability in planner skills, experience and training. Planners often lack knowledge about different types of disability, which can hinder their ability to formulate a good plan.⁸⁹
- 2.69 Evidence submitted to the present inquiry suggests that these issues persist. For example, Maurice Blackburn Lawyers noted that:
- There seems to be an increasing number of complaints from participants and their families/carers about delays in receiving an NDIS plan, the lack of experience and expertise of NDIS planners, the lack of communication about the proposed plan, and also the content of the plans themselves.⁹⁰

⁸⁶ Review of the National Disability Insurance Scheme Costs, *Terms of Reference*.

⁸⁷ The Productivity Commission also issued a progress report in 2019.

⁸⁸ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs*, October 2017, p. 181.

⁸⁹ Productivity Commission, *National Disability Insurance Scheme (NDIS) Costs*, October 2017, p. 181.

⁹⁰ Maurice Blackburn Lawyers, *Submission 11*, p. 2.

Issues raised in the 45th Parliament in relation to planning

2.70 The committee conducted 8 inquiries during the 45th Parliament.⁹¹ The following section provides a brief overview of some of these inquiries, and highlights issues and recommendations relating to the NDIS planning process.

2.71 It is noted that while government agreed (or agreed in principle) with the majority of the recommendations made by the committee, only limited progress had been made on implementation as at 30 March 2019.⁹²

Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition

2.72 Between November 2016 and August 2017, this committee undertook an inquiry into the provision of services under the NDIS for people with psychosocial disabilities, reporting in August 2017.

2.73 Key issues raised by submitters and other stakeholders related to: eligibility criteria for the scheme, including lack of clarity and guidelines leading to inconsistency in outcomes; access to the NDIS; training of NDIS staff; the adequacy of plans; continuity of supports for people not eligible for the NDIS; provider of last resort arrangements, including for people in indefinite detention; and access to NDIS support services for people in custody.⁹³

2.74 The committee recommended that the NDIA implement a number of measures to improve planning processes and deliver better outcomes for participants. In this respect, it recommended the NDIA:

- develop and proactively market resources and training for primary health professionals about the NDIS, especially in regards to access to the scheme and planning processes;⁹⁴
- develop an approach to improve flexibility in plans to respond to the fluctuating needs of participants with a psychosocial disability, including allowing minor adjustments to be made without the need for a full plan review;⁹⁵ and

⁹¹ JSC NDIS, *Completed inquiries in the 45th Parliament*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/National_Disability_Insurance_Scheme/Completed_inquiries (accessed 22 November 2019).

⁹² JSC NDIS, *Progress Report*, March 2019, pp. 67–130. For example, the committee made 24 recommendations in the course of its inquiry into the provision of services for people with psychosocial disabilities. The government indicated its support, partial support or in-principle support for 21 recommendations. However, as at 30 March 2019, the NDIA had completed only two of those recommendations, with an additional four in progress.

⁹³ JSC NDIS, *Progress Report*, March 2019, pp. 17–30.

⁹⁴ JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, p. 35 (**Recommendation 7**).

⁹⁵ JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, p. 35 (**Recommendation 10**).

- report on the level of engagement of carers in the planning process.⁹⁶
- 2.75 Many issues highlighted in the committee's August 2017 report persisted as at March 2019, including inconsistencies in eligibility and planning outcomes, limited progress in developing a standardised assessment tool, and continuity of support and funding of services outside the NDIS.⁹⁷ These issues were also raised by a number of submitters during the current inquiry.
- 2.76 Relevantly, the committee noted that feedback from stakeholders during its February 2019 roundtable indicated that there is still inadequate flexibility in plans for participants with psychosocial disability, and that any change to a plan—even a minor change—is triggering a full plan review.⁹⁸

Provision of services under the NDIS Early Childhood Early Intervention Approach

- 2.77 Between June and December 2017, this committee undertook an inquiry into the provision of services under the NDIS Early Childhood Early Intervention (ECEI) Approach, reporting in December 2017.
- 2.78 Key issues raised by submitters and other stakeholders related to: access to the NDIS; the planning process, the adequacy of plans and delays in the plan approval process; underfunded plans for children with Autism Spectrum Disorder (ASD); and the costs of delivering services for service providers.⁹⁹
- 2.79 Relevant to the present inquiry, the committee recommended that:
- the NDIA provide ongoing and targeted training to planners creating ECEI plans for children to ensure that they are equipped with the most up to date knowledge, expertise and resources in their decision making;¹⁰⁰
 - the NDIA ensure that provision of funding for assessments in plans is based on participant needs, and not arbitrarily restricted to a yearly assessment;¹⁰¹
 - the NDIA urgently address issues of scope and level of funding in plans for children with autism with a view to ensuring that recommended evidence-based supports and therapies are fully funded; and¹⁰²

⁹⁶ JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, p. 35 (**Recommendation 11**).

⁹⁷ JSC NDIS, *Progress Report*, March 2019, pp. 20–30.

⁹⁸ JSC NDIS, *Progress Report*, March 2019, p. 77.

⁹⁹ JSC NDIS, *Progress Report*, March 2019, p. 30–40.

¹⁰⁰ JSC NDIS, *Provision of services under the NDIS Early Childhood Early Intervention*, December 2017, p. 37 (**Recommendation 8**).

¹⁰¹ JSC NDIS, *Provision of services under the NDIS Early Childhood Early Intervention*, December 2017, p. 42 (**Recommendation 10**).

¹⁰² JSC NDIS, *Provision of services under the NDIS Early Childhood Early Intervention*, December 2017, p. 49 (**Recommendation 11**).

- funding be made available in plans for interpreters, including funding an interpreter to communicate with the participant's parents or carers.¹⁰³
- 2.80 By early 2019, stakeholders acknowledged that there had been improvements through the development and implementation of the ECEI pathway. However, there were a range of issues that still needed to be urgently addressed, including: delays in provision of services; significant challenges in addressing the needs of children with ASD; and the lack of a clear, national strategy around the ECEI approach under the NDIS.¹⁰⁴

Transitional arrangements for the NDIS

- 2.81 From June 2017 to February 2018, this committee undertook an inquiry into transitional arrangements for the NDIS, reporting in February 2018.
- 2.82 Key issues raised by submitters and other stakeholders related to: the interface between the NDIS and mainstream health services; delays in accessing the scheme; plan approvals, plan activations and access to services; funding levels and associated service gaps; the lack of clarity on how the NDIA intends to intervene in thin markets; provider of last resort arrangements; service gaps; and a lack of culturally appropriate services for CALD persons and Aboriginal and Torres Strait Islanders communities to engage with the NDIS.¹⁰⁵
- 2.83 Relevant to the present inquiry, the committee recommended that the NDIA:
- ensure that across all jurisdictions people with disability can access pre-planning supports;¹⁰⁶
 - urgently finalise and start piloting tailored pathways for people with psychosocial disability; children; people from Aboriginal and Torres Strait Islander communities; those from CALD backgrounds, and participants with more complex needs;¹⁰⁷
 - focus all necessary resources and efforts on reducing wait times at all points of the scheme, specifically for plan approval, activation and review;¹⁰⁸ and
 - ensure support coordination is adequately funded in plans to meet participants' needs and not limited to a fixed period.¹⁰⁹

¹⁰³ JSC NDIS, *Provision of services under the NDIS Early Childhood Early Intervention*, December 2017, p. 51 (**Recommendation 51**).

¹⁰⁴ JSC NDIS, *Progress Report*, pp. 31–40.

¹⁰⁵ JSC NDIS, *Progress Report*, March 2019, pp. 40–51.

¹⁰⁶ JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, p. 45 (**Recommendation 10**).

¹⁰⁷ JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, p. 45 (**Recommendation 11**).

¹⁰⁸ JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, p. 46 (**Recommendation 13**).

¹⁰⁹ JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, p. 77 (**Recommendation 21**).

Progress report 2017

- 2.84 In September 2017, the committee tabled its first progress report for the 45th Parliament, covering the period from 1 July 2016 to 30 June 2017. The report provides an overview of activities related to the implementation, performance, governance, administration and expenditure of the NDIS over the reporting period. It also considers issues raised in evidence to the committee's inquiry into general issues around the implementation and performance of the NDIS.
- 2.85 Key issues raised by submitters and other stakeholders focussed on: the NDIA's planning process; lack of transparency and responsiveness; reductions to plan funding; development of non-contextual pricing for services; portal issues; transport market design; and the early intervention pathway.¹¹⁰
- 2.86 Relevantly, the 2017 progress report raised a number of issues relating to the NDIS planning process. In particular, participants, their families, carers and service providers expressed dissatisfaction with plans being developed over the phone; the skills and competence of planners; inconsistency in planning decisions; delays to plans and reviews; and the NDIA's lack of transparency.¹¹¹
- 2.87 The committee made a number of recommendations to address the issues associated with NDIS planning. Relevantly, the committee recommended that:
- the NDIA provide an opportunity for participants, and those who support them, to view, comment, and rectify any errors in their plan in advance of it being finalised and implemented;¹¹² and
 - the NDIA ensure that only criteria underpinned by terminology set out in the NDIS Act and associated rules are used in the assessment of appropriate supports.¹¹³

Conclusion

- 2.88 The committee acknowledges the work that has been progressed in recent months to improve the NDIS planning experience and outcomes for participants, providers and other stakeholders.
- 2.89 However, as discussed in subsequent chapters, issues with the planning process persist and the committee's previous recommendations have not necessarily been implemented by the NDIA. To address this concern, the committee makes a number of recommendations to improve the planning process in Chapter 3, and in Chapter 4 the committee highlights other issues that it will continue to examine in the coming months.

¹¹⁰ JSC NDIS, *Progress Report*, September 2017, p. 41.

¹¹¹ JSC NDIS, *Progress Report*, September 2017, pp. 46-57.

¹¹² JSC NDIS, *Progress Report*, September 2017, p. 72 (**Recommendation 1**).

¹¹³ JSC NDIS, *Progress Report*, September 2017, p. 73 (**Recommendation 5**).

Chapter 3

Key areas of concern

Introduction

3.1 Planning is fundamental to the operation of the National Disability Insurance Scheme (NDIS). As noted earlier in this report, the plan sets out the goals of the NDIS participant, and the funded supports that will assist the participant to realise those goals. The plan determines – in large part – a person's experience of the NDIS.

3.2 This view was shared by many submitters to this inquiry. For example, Mr Drew Beswick from Alliance20, an organisation representing 21 of Australia's largest disability service providers, described planning as the 'gateway to the NDIS':

Fixing plans and the planning system will help sort out some of the issues that we are seeing emerge with service provision and allocation. Plans unlock services and support. Planners and local area coordinators provide information, assist with entry to the scheme and help guide participants through the process. They are pivotal to the success of the scheme.¹

3.3 Given the significance of the plan and the process to the NDIS, it is crucial that planning is effective, and meets the needs of all persons with disability who are supported by the scheme.

3.4 Despite the significance of the plan and the planning process to the NDIS, the committee has heard from numerous submitters and inquiry participants that there are significant issues with the operation and implementation of the NDIS, particularly in relation to the planning process. Still more concerning is that a number of these issues are not new, and have been raised by submitters to previous inquiries. In this respect, Ms Deane, Campaign Director at Every Australian Counts, the grassroots campaign that advocated for the introduction of the NDIS, has titled the submission by Every Australia Counts 'Groundhog Day', noting that:

...people with disability and their families feel like they're trapped in some NDIS version of Groundhog Day where they keep saying the same things over and over and over again about what the problems are and what the potential solutions are but they wake the next morning to find that very little has changed. If I could summarise our submission it would to make a plea to the committee, to say that the problems with the NDIS are well known and the solutions are well known—what we're really missing is action.²

¹ Mr Drew Beswick, Representative, Alliance20, *Proof Committee Hansard*, 9 October 2019, p. 1.

² Ms Kirsten Deane, Campaign Director, Every Australian Counts, *Proof Committee Hansard*, 8 October 2019, p. 1.

- 3.5 The committee considers that there is an urgent need for action to improve the operation of the NDIS, and in particular to improve the planning process to ensure that people with disability are fully supported to achieve their goals.
- 3.6 This chapter examines a number of areas associated with planning in relation to which submitters have raised concerns, and makes recommendations to improve the planning process in the shorter term.
- 3.7 As previously noted, this is an interim report. The committee will give further consideration to the issues raised in this chapter, as well as to the issues highlighted in Chapter 4, in the coming months, before tabling a final report in relation to NDIS planning in 2020.

Draft plans

- 3.8 A number of submitters raised concerns that plans frequently contain errors and omissions, and do not adequately involve NDIS participants in the planning process. For example, the Brotherhood of St Laurence stated that many participants found the planning process 'disempowering and opaque', with little communication or transparency between the NDIA, Local Areas Coordinators (LACs) and participants. It also noted that NDIA planners often base decisions about the inclusion supports on Typical Support Packages (TSPs), rather than on the individual circumstances of the participant.³
- 3.9 ConnectAbility Australia, a service provider in the Hunter Region, stated that approximately 50 per cent of plans have incorrect basic data (for example, names and addresses), and noted that the process to correct these errors is onerous, cannot be billed and is a cost to both providers and the NDIS.⁴
- 3.10 One submitter spoke directly to how these issues impact participants, families and carers, explaining that:

...as parents of a 29 year old woman with severe autism, we have never been sent a draft plan for our daughter. Instead, some time after a plan review meeting, a finalised plan suddenly appears in the "Participant Portal", and we receive a printed plan in the mail a week or two later.

As our daughter has been a participant since the start of the Scheme, and her case is complex, she has had numerous plans. In most if not all cases, plans sent to us have needed to be reviewed, as either they have not reflected correctly what had been agreed our daughter needed, or there have been other mistakes – some absolutely horrendous. We believe this is a common experience.⁵

³ Brotherhood of St Laurence, *Submission 73*, p. 3.

⁴ ConnectAbility Australia, *Submission 84*, p. 6. ConnectAbility asserted that providing draft plans could help eliminate mistakes and deliver additional certainty, leading to fewer contested plans, less animosity and greater trust.

⁵ Name withheld, *Submission 96*, [p. 1].

3.11 However, submitters and witnesses were concerned that drafts are still not given to participants as part of the NDIS planning process. For example, Family Advocacy expressed concern that 'the NDIA is not listening to families about the importance of seeing a draft plan', noting that:

The NDIA is making decisions unilaterally rather than it being a consultative process. There is a significant imbalance of power being experienced in this process. A person with disability ought to have the power to correct an administrative error without going to review and all the delays and stress this causes even if it means allowing a longer period of time for the final plan to be completed.⁶

3.12 Every Australian Counts provided a succinct overview of the current planning environment, noting that:

[E]veryone would like to be able to see a draft of their plan. This would allow people to correct simple mistakes and make sure it accurately captures the information they have provided. But the draft plan has become the unicorn of the NDIS—a magical mythical creature that everyone would love to see but so far no one has.⁷

Support for draft plans

3.13 The overwhelming majority of submitters supported the provision of draft plans as a means of addressing the issues outlined above. In this respect, a number of submitters noted that draft plans could increase participant involvement in the planning process, build trust, and ensure that errors in plans are corrected before plans are finalised—thereby reducing complaints, disputes and costly plan reviews.

3.14 The committee heard numerous examples of where errors and oversights may be more effectively addressed if participants are provided with a draft plan. For example, the Northern Territory Office of the Public Guardian noted that draft plans may be beneficial in the following instances:

- where there are discrepancies between what is discussed during the planning meetings and what is outlined in the support packages;
- specific funding for supports is discussed or agreed, but does not appear in the plan;
- matters discussed during planning conversations are not properly captured;
- plans received have been found to be illogical; and
- planners indicate that additional information is being sought and this is not followed up and not provided in the plan.⁸

3.15 The Office of the Public Guardian further noted that the introduction of draft plans could provide an opportunity to ensure plans reflect the real needs of

⁶ Family Advocacy, *Submission 108*, p. 16.

⁷ Every Australian Counts, *Submission 83*, p. 6.

⁸ Northern Territory Office of the Public Guardian, *Submission 116*, [pp. 4–5]

participants, and could ensure that complex matters discussed at meetings can be effectively followed up.⁹

3.16 Identitywa, a West Australian agency supporting people with disability and their families, noted that providing the opportunity to review draft plans could help eliminate errors and help reduce disputes, complaints and requests for reconsideration.¹⁰

3.17 Ms Van Poppel from Women with Disabilities Victoria also noted that draft plans would allow participants to review plans and ensure that matters are not omitted. Ms Van Poppel further stated that allowing participants to review draft plans ahead of planning meetings could empower participants to raise important issues in planning meetings:

For women with disabilities in particular, I think that's a really important step—having that ability to pause, relook at something and have permission to raise something that you might not necessarily have felt comfortable raising in a planning meeting. When we've been running these planning workshops and NDIS information workshops with women across the state, we've asked them what gender issues they see coming up in the NDIS, and almost always the first thing that they say is, 'I don't feel comfortable to speak up'.¹¹

3.18 Autism Spectrum Australia also noted that participants often lack the confidence to raise important issues during planning meetings, and asserted that draft plans would 'help participants have confidence their plans will successfully outline their situations and include the goals that are a priority for the participant and family'.¹²

3.19 Mrs Tiffany Heddes, a member of Assistive Technology Suppliers Australia, emphasised the importance of allowing participants to review draft plans before they are finalised, stating that:

The NDIS is about choice and control, but, if you're not able to see your plan, how is that choice and control? If you're able to see your plan before it's implemented, you know things can be picked up. We could always suddenly flag, 'Oh, I know that wheelchair is going to need service, so I need to go back and ask them to put maintenance fees in there. I need to ask them to put rental fees or trial fees in'—all these different things. In the

⁹ Northern Territory Office of the Public Guardian, *Submission 116*, [p. 5].

¹⁰ Identitywa, *Submission 55*, [p. 5]. In this respect, Identitywa noted that in some cases new plans have not contained updated information about the participant, or information has been 'copied and pasted' from older plans.

¹¹ Ms Leah van Poppel, Chief Executive Officer, Women with Disabilities Victoria, *Proof Committee Hansard*, 7 November 2019, p. 1.

¹² Autism Spectrum Australia, *Submission 5*, [p. 4].

long term, that will save the NDIS so much money. It will save parents and everyone in the industry so much heartache and frustration.¹³

3.20 Disability Council NSW also emphasised the importance of participant choice and control, asserting that NDIS participants and their carers should have access to draft plans as the information in those plans is directly relevant to them and concerns their welfare as NDIS participants.¹⁴ Occupational Therapy Australia raised similar matters, and recommended that draft plans allow for 'easy adjustment' of the plan to accommodate changes identified as reasonable, necessary and/or desirable.¹⁵

3.21 Submitters also noted that the provision of draft plans could help address communication issues between participants, providers and the NDIA that are undermining the planning process and resulting in poorer outcomes for participants and increased work for providers. For example, Allied Health Professions Australia (AHPA) stated:

AHPA is aware of numerous examples of errors in plans that resulted in the need for plan reviews and which could have been more effectively addressed through the use of draft plans. This could significantly reduce the volume of plan reviews resulting from plans not resembling the identified needs of participants and their families. AHPA also argues that it would be appropriate to allow participants to nominate a support person, including a provider, as not every participant is able to review a plan appropriately. We also note that a more collaborative process may involve providers having a role in reviewing draft plans, particularly in more complex areas such as in relation to assistive technology with significant benefits in reducing the incidence of planning errors.¹⁶

3.22 Other submitters noted that the provision of draft plans may allow service providers to have input into the planning process, and to identify potential deficiencies and funding shortfalls before the plan is finalised. For example, Mr Tom Ballantyne, Maurice Blackburn Lawyers, noted that:

With the draft plan, I think that's an opportunity to perhaps overcome this gap in expert evidence. For a participant who does have a relationship with an occupational therapist, it's an opportunity to show it to them, and perhaps that's also a way of moderating this conflict of interest. It's not that the occupational therapist is there saying in a planning meeting, 'You need XYZ, and I should be doing it,' but at least they're in the background, informally advising and saying, 'Well, they've approved a prosthetic limb,

¹³ Mrs Tiffany Heddes, Member, Assistive Technology Suppliers Australia, *Proof Committee Hansard*, 8 October 2019, pp. 22–23.

¹⁴ Disability Council NSW, *Submission 9*, p. 1.

¹⁵ Occupational Therapy Australia, *Submission 23*, p. 7.

¹⁶ Allied Health Professions Australia, *Submission 74*, [pp. 7–8].

but they have not approved funding for all the capacity building you need to actually use that,' and pointing out those sorts of deficiencies.¹⁷

- 3.23 The National Rural Health Alliance similarly suggested that draft plans be circulated to both providers and participants, noting that providers may have a role in reviewing draft plans—particularly in complex areas such as assistive technology.¹⁸

Potential to reduce unscheduled plan reviews

- 3.24 Usually, a plan is established for twelve months and plan review occurs as part of the planning cycle. However, a plan may also be reviewed following a request from a participant or at the initiative of the NDIA. Currently, any changes to a plan require a full plan review.

- 3.25 Submitters to the inquiry expressed concern at the frequency of unscheduled plan reviews, noting that such reviews are often required due to the omission of an important supports from the participant's plan. For example, Mr Mark Tonga, Chair of the NSW Disability Council, stated that:

I had to keep going back to lead the questions with the planners. There was discussion with the planners and everything was hunky-dory, and then I got a frightening surprise when I got my plan. I had to go back 13 times to review my plan and ask for the things that I need. They weren't specialist things. They were repairs to my wheelchair, a shower chair—things I really needed. I thought there was a clear understanding with my planner, but I think there was a breakdown in communication.¹⁹

- 3.26 Submitters also observed reviews may be burdensome or traumatic for participants. For example, Mrs Parkinson-Cumine, Li-Ve Tasmania, noted that:

Participants are scared of reviews too. We've had participants who've gone for a new commode chair and all of a sudden their community access has been slashed by \$20,000, completely unlinked. So you've got a group of participants who are terrified to go back, even though their plans don't meet their needs, because of the negative experiences they've had. Then they've had to go back for another review. So I think anything we can do to help participants work with the planners to get the plan right from the get-go would be a huge advantage.²⁰

- 3.27 Submitters asserted that draft plans would reduce the need for reviews. For example, the Australian Orthotic Prosthetic Association (AOPA) observed that:

¹⁷ Mr Tom Ballantyne, Principal Lawyer, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 7 November 2019, p. 42.

¹⁸ National Rural Health Alliance, *Submission 91*, p. 19.

¹⁹ Mr Mark Tonga, Chair, Disability Council NSW, *Proof Committee Hansard*, 9 October 2019, p. 17.

²⁰ Mrs Nicole Parkinson-Cumine, Operations Manager, Li-VE Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 15.

Draft plans would decrease the likelihood of plans omitting orthoses/prostheses and ongoing services and supports crucial to their orthosis/prosthesis, all of which result in internal plan reviews.

The introduction of draft plans for participants with complex support needs would support the principles of choice and control and decrease the need for plan reviews associated with misinterpretation and communication issues during the planning process.²¹

- 3.28 The Office of the Public Guardian (Queensland) noted that draft plans would reduce the need for formal plan reviews, as well as contributing to better plan outcomes and supporting the development of longer-term plans.²²
- 3.29 The Royal Australasian College of Physicians (RACP) noted that developing draft plans could result in improvements to the accuracy and suitability of plans and reduce the number of unscheduled plan reviews.²³

Potential risks associated with draft plans

- 3.30 Although there was general support for draft plans, some submitters expressed concern that any changes to the current planning process should not cause further delays for people with disability to access supports.
- 3.31 For example, the Northern Territory Office of the Public Guardian highlighted that 'plans may sit unresolved for long periods of time...which would not be positive for participants'.²⁴ Mr Tom Ballantyne, Maurice Blackburn Lawyers, noted that the 'flipside' to the benefits delivered by draft plans are potential delays to plan approvals and participants receiving their necessary supports.²⁵
- 3.32 The Office of the Public Guardian (Tasmania) similarly stated that while draft plans could 'potentially be a good means of checking for feedback before finalising a plan, and of providing parties the opportunity to ask questions of the planner', it would not support draft plans if they would result in further delays for participants.²⁶
- 3.33 Submitters therefore emphasised the need for timeliness if draft plans are to be introduced. In this respect, Syndromes Without A Name (SWAN) Australia noted that a draft plan should:

²¹ Australian Orthotic Prosthetic Association, *Submission 80*, p. 5.

²² Office of the Public Guardian (Queensland), *Submission 114*, p. 10.

²³ The Royal Australasian College of Physicians, *Submission 105*, p. 6.

²⁴ Northern Territory Office of the Public Guardian, *Submission 116*, [p. 5].

²⁵ Mr Tom Ballantyne, Principal Lawyer, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 7 November 2019, p. 42.

²⁶ Office of the Public Guardian (Tasmania), *Submission 59*, p. 5.

[allow] for participant feedback that can be addressed in a timely manner and...improve the current disconnect in the system between the participant needs and planner funding decisions.²⁷

- 3.34 In order to ensure that the introduction of draft plans does not cause unnecessary delays, some submitters recommended setting a timeframe for participants to consider draft plans. For example, Identitywa suggested that:

individuals, their decision-makers and support organisations [be] provided with an opportunity (perhaps 7 working days) to...provide factual information on draft plans prior to them being made active. This would reduce additional hold-ups, plan disputes and complaints.²⁸

- 3.35 Early Start Australia similarly suggested setting a timeframe for participants to respond to draft plans. It also stated that draft plans were a routine part of NDIS trials from 2014 to 2016, and were effective in ensuring that errors and omissions could be identified and resolved in a timely manner. As such, Early Start Australia argued that:

Effectiveness of draft plans has been proven and is proven to have little impact on the timeframe of delivering a finalised plan. Include draft plans as routine and standard operation in the plan review process.²⁹

- 3.36 Submitters also observed that the draft planning process should involve participants in a meaningful way. The Mental Illness Fellowship of Australia (MIFA) noted that this is particularly important to ensure that people with psychosocial disability receive optimal supports:

For there to be true participant involvement in the planning process, planners must work with participants to review their draft plans in a streamlined and timely manner to minimise any uncertainty or undue delay. Individuals with severe and complex mental illness may have already undergone a lengthy access process, so it is important that any draft planning process is sensitive to the needs of people with psychosocial disability and the additional barriers to access that they face.³⁰

- 3.37 The National Aboriginal Community Controlled Health Organisation (NACCHO) noted that although 'draft plans' are made available in certain circumstances, there is little scope for consultation before the plan is finalised:

[T]he NDIA does not tend to enter into any discussion about the supports included in the plan and the 'draft plans' are most often finalised with no opportunity for adjustments. This can lead to inadequate plans for the participant with limited options to adjust the plans.³¹

²⁷ Syndromes Without A Name (SWAN) Australia, *Submission 17*, [p. 7].

²⁸ Identitywa, *Submission 55*, [p. 5].

²⁹ Early Start Australia, *Submission 24*, p. 6.

³⁰ Mental Illness Fellowship of Australia, *Submission 107*, p. 6.

³¹ National Aboriginal Community Controlled Health Organisation (NACCHO), *Submission 119*, [p. 6].

3.38 This issue was also highlighted by National Disability Services (NDS), which noted that

the current planning process includes showing the participant a draft plan at the conclusion of the planning meeting but does not give it to them to take away to consider...Unfortunately, the draft plan shown to the participant during the...meeting may not be the same as what gets funded (the planner needs to submit the draft to a delegate for approval).³²

3.39 NDS noted that, 'in an ideal world, [the participant] would be given a draft plan to take away to consider'.³³

3.40 Other submitters raised similar issues in relation to the relationship between the participant, the planner and the NDIA delegate. For example, Disability Advocacy Victoria submitted that the delegate should 'meet participants and LAC to see if participants have questions regarding their draft plan'.³⁴ This issue is explored further below.

3.41 Finally, some submitters noted that while draft plans may improve planning for NDIS participants, they are not a panacea for all issues associated with the planning process. For example, Northcott pointed out that:

the real issue is ensuring that planners are properly trained and experienced to guide and assist customers so that the first submitted plan is the right one and meets their needs.³⁵

Joint planning

3.42 A number of submitters raised concerns about lack of communication between participants, planners and NDIA delegates, and lack of transparency in the planning process. In particular, concerns were raised that participants frequently do not have the opportunity to meet face-to-face with the NDIA delegate who makes the final approval decision.

3.43 In this regard, the Brotherhood of St Laurence provided the following quote from an NDIS participant which—in its view—reflected the views expressed in a study that the Brotherhood conducted in 2018:

You talk about a rapport...you [the participant] have a two-hour meeting with a person [LAC staff]. You never see them again, so really the rapport building is quite minimal...They [LAC staff] then put together the plan based on that. It then goes into the behemoth of the NDIS to a planner who has never seen you or anybody else. You don't know who this person is. There's this huge brick wall there. Even the LACs don't have access to whoever the planner is, and they then make all the decisions, so the LAC,

³² National Disability Services, *Submission 45*, [p. 4].

³³ National Disability Services, *Submission 45*, [p. 4].

³⁴ Disability Advocacy Victoria, *Submission 26*, p. 3.

³⁵ Northcott, *Submission 19*, p. 5.

from my understanding, can really write whatever they want, but they're not the ones making the decision.³⁶

- 3.44 Until recently, it had been the committee's understanding that the planning process was typically conducted with the participant and an NDIA delegate. However, at the committee's public hearing in Canberra, the committee heard from the NDIA that, in the majority of cases, it is the LAC who conducts the planning and plan building process. Ms Vicki Rundle, Deputy Chief Executive Officer, advised the committee that:

...currently it would be around 20 per cent of our planners who look after our complex participants would do both the planning and also would do the plan approval with that complex participant, because the remainder [approximately 80 per cent] of participants generally would be dealt with by LACs, and then the delegate would receive the plan for approval.³⁷

- 3.45 The NDIA indicated that it is working towards ensuring that participants are able to meet face-to-face with planners. However, it also noted that 'planners' may refer to either the LAC who is involved in plan development or the NDIA delegate in more complex cases:

We mean whichever group you would expect to have the planning conversation with the participant, be it an LAC in the first group I talked about—that 80 per cent—or the complex cases.³⁸

- 3.46 Submitters noted that having the LAC prepare the plan, before sending it to an NDIA delegate with limited if any involvement in the planning process is resulting in poor outcomes for participants. For example, Ms Fordyce, Amparo Advocacy, observed that:

Even if you do have a good LAC who's put together, with the help of others, some good information, the planner who makes the final decision has never met the person with a disability, has never met the family and has not heard from the advocate or the person themselves as to what their life experiences are and what their needs are.

...

Consequently, you get plans that are poor and lack support coordination, which will never be implemented, so then we have to go for a review. I don't think the two-tier process of having an LAC doing the planning and someone else designing the final plan is working. People need to meet the individual. I think it's really fundamental to meet the person and hear their story.³⁹

³⁶ Brotherhood of St Laurence, *Submission 73*, p. 3.

³⁷ Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 October 2019, p. 33.

³⁸ Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 October 2019, p. 35.

³⁹ Ms Maureen Fordyce, Manager, AMPARO Advocacy, *Proof Committee Hansard*, 8 October 2019, p. 44.

NDIA joint planning proposal

3.47 In its submission, the NDIA advised that joint planning is an example of how the NDIA is working towards a collaborative and transparent planning experience for participants. The NDIA noted that since 6 May 2019, it had been conducting a 'soft launch' of joint planning meetings in Southern Adelaide, with the intention to roll it out more broadly following a detailed evaluation. The NDIA explained the process as follows:

In the joint planning meeting, a participant engages with their LAC and assigned NDIA planner delegate to discuss their NDIS plan before it is finalised. This occurs following the pre-planning meeting and prior to plan implementation. This meeting gives the participant an opportunity to ask questions to better understand their NDIS plan and includes supports before the plan is approved. In most cases, the participant will leave the joint planning meeting with an approved plan and will be able to access their supports immediately.⁴⁰

3.48 At the committee's hearing in Adelaide, the NDIA provided further detail on joint planning:

Before the joint plan meeting the participants will have what we call a plan summary statement without the funded support. It will talk about the goals and what the outcomes are. At the joint planning meeting they actually have what we call a working version of the plan. Once the plan is explained they can actually take that plan with them at the end of the meeting.

...

At the joint planning meeting, when [the participant is] happy with the plan then the plan is approved. The local area coordinator then sits with the participant or the carer and explains how to use the funds, which is what we call a plan implementation meeting.⁴¹

3.49 The NDIA further explained that:

The draft plan, as the plan summary, is at the end of the pre-planning conversation. So when the local area coordinator has the pre-planning meeting with the participants, they understand the needs and wants of the participant. What we are envisaging now is to actually introduce that plan summary statement without funded support. That gives them the outcomes, the goals and what's actually in the plan. When they come through the joint planning meeting is when the funded supports are actually loaded into the actual goals and outcomes set in the plans. Part of the joint planning is then reassurance and reconfirming that this is what they've told us, this is what's been recorded and this is...the funded support actually...included in the plan. Part of the joint planning is actually to make sure that if there are any further changes required, then we'll make the changes on the spot. If not, then this gives an opportunity

⁴⁰ National Disability Insurance Scheme, *Submission 20*, p. 6.

⁴¹ Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, pp. 55–56.

for us to approve the plan on the spot so that the participants know that the plan is actually approved without any further delay.⁴²

- 3.50 The NDIA noted that, as part of the joint planning trial, joint planning was offered to 347 participants in South Australia from May to December 2019. Of those 347 participants, 223 were involved in the joint planning trial. 203 plans were approved at joint planning meetings.⁴³
- 3.51 While the NDIA noted that a fully costed draft plan is not currently provided to participants ahead of the joint planning meeting, it stated that there is no technical impediment to providing participants with a costed draft plan ahead of joint planning meetings.⁴⁴
- 3.52 At the committee's public hearing in Canberra, the NDIA also indicated that it would consider providing costed draft plans, in conjunction with draft plan summaries.⁴⁵ However, it also highlighted some information security issues associated with LACs giving draft plans to participants:

At the moment, the only way the LAC could print out a draft plan would be to send that plan to their email—not an NDIS email—and print it out for a participant, which of course [is] not something that we'd encourage because then we know that it's been sent to an unsecure email.⁴⁶

Stakeholder views on joint planning

- 3.53 Aside from organisations directly involved in the joint planning trial, the majority of witnesses at public hearings were unaware of joint planning meetings or the NDIA's intention to roll out joint planning on a national basis. However, stakeholders generally supported joint planning as a concept.
- 3.54 In this respect, National Disability Services (NDS) advised that while some of its members were participating in the joint planning trial, the organisation itself had not been involved in the trial or been contacted by the NDIA. However, representatives of the NDS did note that the NDS 'would embrace the trialling of any approaches to planning which have the capacity...to improve what has been happening to date.'⁴⁷

⁴² Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 57.

⁴³ Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 52.

⁴⁴ Mr Sudharsan Raghunathan, Branch Manager, Participant Pathway Design, National Disability Insurance Agency, *Proof Committee Hansard*, 19 November 2019, p. 58.

⁴⁵ Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 October 2019, p. 39.

⁴⁶ Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 October 2019, p. 35.

⁴⁷ Mr David Moody, Acting Chief Executive Officer, National Disability Services, *Proof Committee Hansard*, 7 November 2019, p. 14.

3.55 The Tasmanian Government also supported the introduction of joint planning meetings, and called for 'a more rapid roll out of these meetings to ensure Tasmanian participants receive their approved supports and services as soon as possible'. The Tasmanian Government considered joint planning meetings had the potential to address delays in plan activation, noting that:

The *COAG Disability Reform Council (DRC) Quarterly Performance Report 30 June 2019* shows a clear delay between a participant's plan approval and plan activation (plan activation is defined as the time from a participant's initial plan approval to when the participant first uses plan supports). In Tasmania, 68 per cent of plans are activated within 30 days of plan approval and 85 per cent within 90 days. This means participants do not access their approved reasonable and necessary supports for significant periods of time post plan approval.⁴⁸

3.56 Some submitters to the Tune Review also expressed support for joint planning, but noted that more should be done to communicate relevant process changes to NDIS participants and their representatives. For example, Carers Australia observed that it only became aware of the NDIA's intention to introduce joint planning through the NDIA's submission to this inquiry, noting that:

If we don't know, then it is unlikely that many participants and their representatives will know about these process changes. Nevertheless, the changes identified appear to be heading in the right direction.⁴⁹

3.57 Carers Australia also noted a lack of clarity around timeframes for the national rollout of joint planning, as well as the extent to which joint planning would overcome the key issues identified by participants and their carers. In this regard, Carers Australia recommended that:

- all participants should be able to see their plans before they are finalised; and
- the national rollout of joint planning meetings be expedited⁵⁰

3.58 However, despite general support for joint planning, evidence received from NDIS participants and carers involved in joint planning indicated that while joint planning as a *concept* is supported, in practice the joint planning process is not meeting expectations. For example, Ms Kate White, a carer of a participant, described her experience with joint planning as follows:

⁴⁸ Tasmanian Government, *Submission 117*, p. 9.

⁴⁹ Carers Australia, *Submission to the Department of Social Services Discussion Paper on the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape*, 25 October 2019, <https://www.carersaustralia.com.au/storage/carers-australia-submission-to-ndis-act-review-and-participant-service-guarantee-discussion-paper.pdf> (accessed 21 November 2019), p. 4.

⁵⁰ Carers Australia, *Submission to the Department of Social Services Discussion Paper on the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape*, 25 October 2019, p. 5.

I can see the concept [of joint planning] is really good, but in that instance I could not see the purpose of them being there. To everything I said—'I was hoping to get this, that or the other'—they said, 'Is it reasonable or necessary?' And they thought that it was unreasonable of me to be asking for the things I was asking for my child.

My child has just started occupational therapy. With most things, when you learn a new skill, you want to go per week—weekly sessions. They thought it was unreasonable and unnecessary for us to be asking for weekly sessions. That really upset me. They said: 'Well, you can make more of it. You can go every second week. You can go with your child.' I said: 'You're making assumptions here. You're making the assumption that I'm not working. You're making the assumption that the provider can provide a time when I can attend. You're making the assumption that we can do it after hours. You're making all these assumptions without even discussing it with us.'

- 3.59 Ms White further noted that the 'draft' plan presented at the meeting was essentially given on a 'take it or leave it' basis, expressing concern that this approach could result in additional challenges and worsened outcomes for vulnerable participants and carers. She also emphasised the importance of having a draft plan prior to the meeting, noting that:

I think having a look at it beforehand would make a huge difference—because then I could come prepared, looking like an adult instead of a person bursting into tears—and also expectations about what, if any, changes would be considered and what aren't: this is within the purview of this meeting and this is outside it. I really didn't have an understanding of what changes may or may not be. I got the impression from it that it was: 'This is what you've got.' I think that would make it easier.⁵¹

Committee view

- 3.60 As noted above, the committee was surprised to hear that around 80 per cent of plans are developed by LACs before being approved by an NDIA delegate, and is concerned that participants often have no contact with the delegate who is responsible for approving their plan. Given that it was originally envisaged that the key role of the LAC would be to provide plan implementation and support coordination services, the committee is also concerned that the new emphasis on planning may detract from LACs' other roles. The committee will consider this matter further in the coming months, and intends to seek additional information from the NDIA and its contractors.
- 3.61 In light of these matters, the committee strongly supports the introduction of joint planning, and welcomes the Minister's announcement that joint planning will be rolled out nationally from April 2020. However, the committee notes that joint planning is in its trial phase. Until joint planning is rolled out, a risk remains that participants will not have the opportunity to meet face-to-face with the NDIA delegates who are responsible for approving their plans.

⁵¹ Ms Kate White, private capacity, *Proof Committee Hansard*, 19 November 2019, p. 64.

- 3.62 The committee considers face-to-face meetings with NDIA delegates to be an essential part of the planning process, as a means of ensuring that participants have the opportunity to communicate their goals and required supports, and can challenge planning proposals that do not meet their needs. The committee notes that work is underway to ensure that participants are offered face-to-face meetings with LACs as part of the Pathways program. The committee calls on the NDIA to ensure that this measure is implemented as soon as possible, and that it is extended to capture face-to-face meetings with NDIA delegates.
- 3.63 It is also unclear to the committee whether joint planning, on its own, will be an adequate substitute for providing fully costed draft plans to participants. In this respect, the committee reiterates that the majority of submitters to the inquiry strongly supported the provision of draft plans as a means of enhancing choice and control for participants, addressing errors in plans, and reducing the incidence of unscheduled plan reviews. The committee has also heard from those involved in the joint planning soft launch that the current process for joint planning may not be sufficient to ensure that participants and their representatives are adequately prepared for planning meetings and feel able to advocate for the supports and funding necessary to meet their needs.
- 3.64 The committee therefore considers that, in addition to the introduction of joint planning, participants should be provided with a fully costed draft plan ahead of joint planning meetings (or any planning meeting that precedes approval of the plan). In this respect, the committee notes that it previously recommended the introduction of a mechanism, such as a draft plan, that would allow participants and their representatives to view, comment, and rectify any errors in their plan before the plan is finalised.⁵² The committee has also heard from the NDIA that there is no technical impediment to providing draft plans.

Recommendation 1

- 3.65 The committee recommends that fully costed, detailed draft plans be made available to participants at least one week prior to their meeting with the official with the authority to approve the plan, and that at the meeting the participant have the opportunity to rectify the plan.**

Recommendation 2

- 3.66 The committee recommends that the National Disability Insurance Agency ensure that participants are given the opportunity to meet face-to-face with an official with authority to approve a plan before the plan is approved.**

⁵² See, for example, JSC NDIS, *Progress Report*, September 2017, p. 72 (**Recommendation 1**).

Plan review processes

No process to review only parts of plans

3.67 As noted earlier in this report, a participant may request that the NDIA conduct a review of their plan at any time. The NDIA has indicated that such requests are generally made where a participant's circumstances have changed and the current plan no longer meets their needs, or where a participant wishes to make a change to how their plan is managed.⁵³

3.68 Where the NDIA conducts a review of a participant's plan, the NDIA must facilitate the preparation of a new plan with the participant.⁵⁴ At present, there is no process to review only part of a plan. Further, a plan cannot be varied once it comes into effect. It can only be replaced.⁵⁵

3.69 A number of submitters observed that current arrangements for plan review are causing significant burden and distress for participants. Submitters also noted that participants were often reluctant to challenge minor errors or seek minor changes to plans due to the threat of having to engage with a full review process. For example, Ms Kirsten Deane, Every Australian Counts, noted that:

...if people decide to go to review they're often told that their whole plan will be reviewed. So you risk perhaps getting a cut in funding and other areas of the plan while you challenge the area that you would like to challenge. People find that unconscionable, because it sounds very much like a threat: don't go to review, because you might lose support elsewhere. So people say that if they put in for a review they would just like the bit that they don't agree with reviewed, not the entire plan. But once they have put in for review, as you would well know, the whole plan is up for grabs. People have to weigh that up with a big concern about getting other areas of the plan cut while they challenge a particular decision.⁵⁶

3.70 In light of these matters, submitters recommended that participants be permitted to review only parts of plans, particularly where changes are minor or routine. For example, Occupational Therapy Australia (OTS) observed that:

under the current planning process, it is usual for a plan review to be triggered if there is a change required to a plan. Participants could be spared the onerous and lengthy process of a full review if plans had the capacity for additional supports to be considered and included via a review of just a section of a plan.⁵⁷

⁵³ NDIA, *Planning Operational Guideline – Reviewing and changing a participant's plan*, <https://www.ndis.gov.au/about-us/operational-guidelines/planning-operational-guideline/planning-operational-guideline-reviewing-and-changing-participants-plan> (accessed 22 November 2019).

⁵⁴ NDIS Act, section 49.

⁵⁵ NDIS Act, subsection 37(2).

⁵⁶ Ms Kirsten Deane, Campaign Director, Every Australia Counts, *Proof Committee Hansard*, 8 October 2019, p. 7.

⁵⁷ Occupational Therapy Australia, *Submission 23*, p. 9.

3.71 Speech Pathology Australia similarly noted that:

Straightforward changes to plans should not have to go through a full review process. It would save time and participant frustration to distinguish between reviews which are 'significant' and those which are less complex. For example, changing the way a plan is being managed should, in most cases, be a simple process and quickly implemented but it seems that this change request is just put on the list and addressed in date order. Plan errors, such as funding being placed in the incorrect category, should also be managed.⁵⁸

Delays in unscheduled plan reviews

3.72 As noted above, a participant may request that the NDIA conduct a plan review at any time. This is referred to as an unscheduled review. The NDIS Act requires the NDIA to decide whether to conduct the plan review within 14 days of receiving the request. If the NDIA decides to conduct the review, it must commence the review within 14 days of making that decision.⁵⁹ However, there is currently no statutory timeframe within which the review must be completed.

3.73 A number of submitters raised concerns regarding delays in the plan review process. For example, the Rights Information and Advocacy Centre noted that:

- delays in review processes lead to decline in mental health and faith in the NDIS process, to disengagement and continuity of supports and significant out-of-pocket expenses for necessary supports;
- delays are often outlasting the expiration of NDIS plans; and
- delays disrupt the flow of the plan, often leading to the inefficient use of funds and disruption to the provision of services.⁶⁰

3.74 The Community and Public Sector Union (CPSU) noted that requests from participants to have their plans reviewed are increasing, with over 10,000 reviews waiting to be actioned. The CPSU further noted that hundreds of unscheduled reviews are 'dropping off' because the scheduled review is taking place before the request for an unscheduled review is actioned.⁶¹ The CPSU further noted significant levels of distress and anger among participants about lengthy delays in the review process, and provided the following account from a NDIA planner:

⁵⁸ Speech Pathology Australia, *Submission 33*, p. 12.

⁵⁹ NDIS Act, subsections 48(1), (2) and (3). By contrast, subsection 48(5) requires the NDIA to conduct a scheduled review before the date specified in the plan, and in the circumstances (if any) specified in the plan.

⁶⁰ Rights Information and Advocacy Centre Inc., *Submission 31*, [p. 6].

⁶¹ Community and Public Sector Union, *Submission 4*, pp. 6–7.

It's distressing when you have to call someone you know has been left in an awful situation for a long time. There's a lot of anger from participants and their carers. I shake every time I go to make a call.⁶²

- 3.75 The Commonwealth Ombudsman noted that it had published a report into the NDIA's administration of reviews, which highlighted a backlog of around 13,000 outstanding review requests—some of which were up to nine months old.⁶³ The Ombudsman further noted that:

...there is still significant work for the NDIA to address timeliness in completing reviews to ensure the backlog does not continue to grow. Indeed, complaints about reviews continue to represent 33 per cent of complaints to the Office about the NDIA.⁶⁴

- 3.76 To address some of these issues, submitters recommended implementing legislative timeframes for review processes and dedicating more staffing and resources to ensure that reviews can be addressed in a timely manner.

Delays in conducting internal reviews

- 3.77 As noted earlier in this report, the NDIS Act provides that a person may request that the NDIA conduct an internal review of particular decisions made under the NDIS Act. Relevantly, these include a decision to approve the statement of participant supports in a plan, or a decision not to conduct an unscheduled plan review.⁶⁵

- 3.78 The NDIS Act provides that the person conducting the internal review must confirm, vary or set aside the relevant decision as soon as reasonably practicable.⁶⁶ However, there is no specific timeframe within which the review must be completed. By contrast, a person affected by a reviewable decision (for example, a participant) must make a request for internal review within three months of being notified of the relevant decision.⁶⁷

- 3.79 Submitters to the inquiry raised concerns about the significant delays in conducting internal reviews of decisions under the NDIS Act. For example, Advocacy for Inclusion (AFI) noted that:

It is common for a participant to wait 6 months or more. During this time, the participant is often without adequate support, funding or services.⁶⁸

⁶² Community and Public Sector Union, *Submission 4*, p. 6.

⁶³ Commonwealth Ombudsman, *Submission 110*, p. 5. The relevant report is *Administration of reviews under the National Disability Insurance Scheme Act 2013*, appended to the Ombudsman's submission.

⁶⁴ Commonwealth Ombudsman, *Submission 110*, p. 5.

⁶⁵ NDIS Act, subsection 99(1), items 4 and 5.

⁶⁶ NDIS Act subsection 100(6).

⁶⁷ NDIS Act, subsection 100(2). Subsection 100(1) requires the decision-maker of a reviewable decision to give written notice of the decision to each person directly affected by the decision.

⁶⁸ Advocacy for Inclusion, *Submission 70*, p. 6.

3.80 AFI observed that key drivers of these delays—and a cause of significant concern for participants—is the lack of a statutory requirement to complete internal reviews within a specific timeframe, and the lack of formal processes within the NDIA to record and respond to review requests. AFI observed that:

[T]here remains no clear definition of what defines a 'reasonably practicable' amount of time as to when the NDIA needs to complete an internal review. Plans are expiring before the NDIA is reviewing them, which applicants are worse off without the support [for which] they are eligible...[T]he NDIA advised that it does not have formally documented procedures or a timeliness standard for acknowledging review requests.⁶⁹

3.81 National Legal Aid (NLA) highlighted similar issues with internal review processes, and recommended that a time limit be set for the review to be completed— noting that this would increase certainty for participants. NLA also recommended greater communication between NDIA officers responsible for conducting reviews and participants and their representatives.⁷⁰

If the NDIS Act provided a set time limit for a review to be completed and an explicit provision that a failure to complete the review within that time would give rise to a deemed decision, participants would have certainty and a clear avenue for review...NLA would welcome an amendment of this sort, which would remove a...barrier to meaningful review.⁷¹

3.82 In relation to timeframes for completing reviews, Maurice Blackburn Lawyers noted an imbalance between the requirement for participants to file a request for internal review within three months, and the absence of a corresponding requirement for the NDIA to complete reviews within set timeframes:

While participants must file a request for review within three months of receiving notice of the decision, there is no timeframe imposed on the Agency to actually complete the review. Many participants report waiting months for any response, by which time their current plan may have expired, whereupon the process has to start again.⁷²

Publishing settlement outcomes

3.83 Some submitters to the inquiry noted that while a high number of external reviews of NDIS decisions—that is, decisions reviewed by the Administrative Appeals Tribunal (AAT)—are resolved by settlement, there is no information available to participants on settlement outcomes.

3.84 In this respect, the Public Interest Advocacy Centre noted that while around 96 per cent of cases before the AAT involving the NDIS were finalised through

⁶⁹ Advocacy for Inclusion, *Submission 70*, p. 6.

⁷⁰ National Legal Aid, *Submission 54*, pp. 15– 19.

⁷¹ National Legal Aid, *Submission 54*, p. 17. This issue may be addressed in the review being conducted by the Department of Social Services in relation to the establishment of a 'Participant Service Guarantee'.

⁷² Maurice Blackburn Lawyers, *Submission 11*, p. 8.

settlement, the details of these settlements remain private. The Centre argued that the lack of transparency around settlement outcomes:

- leads to a lack of accountability within the NDIA in ensuring that funding decisions are made correctly; and
- hinders the ability of participants to understand the supports and levels of funding that are provided to others in similar situations.⁷³

3.85 In light of these issues, the Centre recommended that the NDIA publish information around AAT settlement outcomes in a manner which balances privacy with accountability. The Centre noted that the release of information around settlement outcomes would not be unique to the NDIA, and suggested that the NDIA could use the approach adopted by the Australian Human Rights Commission as a model.⁷⁴

3.86 At the committee's public hearing in Sydney, representatives from the Public Interest Advocacy Centre noted that the Centre had recommended publication of settlement outcomes to the NDIA, and the NDIA was 'actively considering the issue'.⁷⁵

3.87 Other submitters to the inquiry also indicated their support for publishing (de-identified) settlement outcomes as a means of increasing transparency and accountability for participants and planners.⁷⁶

Committee view

3.88 The committee is concerned that requiring a full plan review in all the circumstances where a participant wishes to make changes to their plan—even where the changes are minor or routine—is causing significant distress for participants and may limit their ability to effectively advocate for reasonable and necessary supports.

3.89 In this respect, the committee notes that submitters to previous inquiries have raised concerns that the rigidity of the NDIS review process, as well as long delays for accessing reviews, do not allow for responsive plans and limit the supports that can be put in place for participants in crises or emergency situations.⁷⁷ The committee previously recommended that the NDIA develop

⁷³ Public Interest Advocacy Centre, *Submission 48*, p. 3.

⁷⁴ Public Interest Advocacy Centre, *Submission 48*, pp. 4–5.

⁷⁵ Mr Jonathon Hunyor, Chief Executive Officer, Public Interest Advocacy Centre, *Proof Committee Hansard*, 9 October 2019, p. 22.

⁷⁶ See, for example, Ms Linsay Ash, Senior Solicitor, National Disability Insurance Scheme, Legal Aid New South Wales, National Legal Aid, *Proof Committee Hansard*, 21 November 2019, p. 24; Mr Tom Ballantyne, Principal Lawyer, Maurice Blackburn Lawyers, *Proof Committee Hansard*, 7 November 2019, p. 42.

⁷⁷ See JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, p. 33.

an approach to allow minor adjustments to be made to plans without triggering a full plan review.⁷⁸ However, this has not been implemented.

- 3.90 In light of these matters, the committee supports the recommendations made by submitters that the NDIS Act be amended to enable participants to review only part of a plan, or to vary a plan. This review process should be subject to the recommended timeframes below.

Recommendation 3

- 3.91 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to enable participants to review only part of a plan, or to vary a plan, in appropriate circumstances.**

- 3.92 The committee is also concerned that significant delays in the plan review process, as well as delays in conducting internal reviews of decisions, are causing undue burden and distress for participants, limiting participants' ability to access supports (including disrupting continuity of supports), and undermining effective administration of the NDIS.

- 3.93 The committee has heard from a number of submitters that the NDIA should be required to complete unscheduled plan reviews within a statutory timeframe. The committee strongly supports this recommendation, and notes it has previously recommended that the NDIA dedicate additional resources to reducing delays at all points of the scheme, particularly for plan approval, activation and review.⁷⁹

Recommendation 4

- 3.94 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to require the National Disability Insurance Agency to complete an unscheduled plan review within 45 days of receiving a request from the participant.**

Recommendation 5

- 3.95 The committee recommends that the *National Disability Insurance Scheme Act 2013* be amended to require the National Disability Insurance Agency to complete internal reviews of decisions within 45 days of receiving a request to conduct the internal review.**

- 3.96 Finally, the committee notes that some submitters have recommended that the NDIA publish settlement outcomes arising from appeals to the AAT. The committee strongly supports this recommendation as a means of increasing

⁷⁸ JSC NDIS, *Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition*, August 2017, p. 35 (**Recommendation 10**).

⁷⁹ See JSC NDIS, *Transitional Arrangements for the NDIS*, February 2018, p. 46 (**Recommendation 13**).

transparency and accountability for participants and planners. However, the committee emphasises the importance of ensuring the privacy of participants (and other parties to proceedings). Consequently, the committee considers that only de-identified details should be published.

Recommendation 6

3.97 The committee recommends that the National Disability Insurance Agency publish settlement outcomes relating to external review by the Administrative Appeals Tribunal, in de-identified form.

Standardised language

3.98 A number of submitters to the inquiry indicated that communications from the NDIA are often complex and bureaucratic, and do not use terminology in a consistent manner. For example, Every Australian Counts emphasised that 'communication from the NDIA needs to be simple and consistent', and that:

Often things that participants and their families need to know are still lost in complicated jargon. The NDIS must use language everyone can understand. They need to use consistent language [on] the website, the plan, the portal and...price guide. And they must make sure they give consistent answers regardless of who asks the question...or answers it.⁸⁰

3.99 Ms Deane, Campaign Director with Every Australian Counts, reiterated these issues at the committee's hearing in Brisbane, noting that communication from the NDIA is:

...not timely...not focused on the participants and their families, and it still remains confusing complex and incredibly bureaucratic. People have had to learn a whole new language with the NDIS. They often talk about magic words; if you don't use the magic words...you don't get what you need.

...

If we want people with disability and their families to be the informed, active, in control participants that the scheme expects them to be, they need really good, clear, simple communication.⁸¹

3.100 Concerns relating to miscommunication and inconsistency were also raised during the committee's public hearing in Canberra, particularly in relation to the terminology associated with the planning process. In this respect, committee members noted that the committee had understood 'planner' to refer to the NDIA delegate with authority to make plan approval decisions. However, it emerged that the term was also used to refer to other persons and bodies (in particular, LACs) involved in the planning process.

⁸⁰ Every Australian Counts, *Submission 83*, p. 6.

⁸¹ Ms Kirsten Deane, Campaign Director, Every Australian Counts, *Proof Committee Hansard*, 8 October 2019, p. 2.

3.101 The NDIA acknowledged that it had contributed to exacerbating some of these issues. Ms Vicki Rundle told the committee that:

I think we haven't helped that clarity at all, because over time we have used the terms interchangeably ourselves. We need to think through how we distinguish the roles of the agency, the planner, the delegate and the LAC.⁸²

Committee view

3.102 Evidence presented to the committee indicates that information disseminated by the NDIA is often overly complex and bureaucratic, and that the NDIA often fails to use consistent language. The committee is concerned that this is creating an additional burden for participants and other stakeholders seeking to navigate what is already a complex scheme, and compounding the challenges faced by people with disability.

3.103 The committee notes that the NDIA is working to harmonise and simplify the language it uses on its website and in published material as part of its ongoing Pathways work. However, evidence received during the inquiry suggests that a number of communication issues persist, and that more needs to be done to improve access and facilitate greater understanding for NDIS participants, providers and other stakeholders.

3.104 The committee therefore considers that the NDIA should use standardised, clear and unambiguous terminology to refer to all matters associated with the NDIA. In particular, the committee considers that the language the NDIA uses in all of its material should clearly delineate between LACs who are planners, NDIA officers who are planners, and NDIA officers who are decision makers.

3.105 The committee also considers that the NDIA should expressly define key terms associated with the planning process, include those definitions in published material (for example, on the NDIA's website and in guidance documents). Examples of terms that the committee considers should be defined include 'Local Area Coordinator (LAC)', 'Planner', 'Delegate' and 'Review'.

Recommendation 7

3.106 The committee recommends that the National Disability Insurance Agency standardise the terminology it uses to refer to persons, processes and other matters associated with the NDIS.

Recommendation 8

3.107 The committee recommends that the National Disability Insurance Agency (NDIA) clearly define key terms associated with the NDIS, and with the

⁸² Ms Vicki Rundle, Deputy Chief Executive Officer, Participants and Planning Experience Group, National Disability Insurance Agency, *Proof Committee Hansard*, 21 October 2019, p. 35.

planning process in particular. Where a term refers to a person, organisation or other body, the committee recommends that the NDIA clearly define that entity's role, functions, responsibilities, limitations and accountability.

Training

3.108 A number of submitters raised concerns regarding the experience, expertise and qualifications of planners. In particular, submitters noted that planners may lack an understanding of particular disabilities and the broader disability sector, and often lack the skills and qualifications needed to assist participants with complex disability support needs.

3.109 In this respect, Allied Health Professions Australia noted that:

...ongoing member feedback [indicates that] there is significant variation in the experience, expertise and qualifications of planners. It is clear from the reported experience of allied health disability providers that there are very real differences in how well individual planners are able to understand the needs of individual participants. It is also clear that the extent to which planners sufficiently understand the disability sector and the individual roles and contributions of different allied health professions varies with direct consequences to those services in participant plans.⁸³

3.110 Submitters also observed that planners may lack the training and experience necessary to support participants facing intersectional challenges. For example, Women with Disabilities Victoria noted that one of its concerns is that planners in the NDIS do not have sufficient training in recognising and responding to family violence, emphasising that:

Women with disabilities need staff at the NDIA and in Local Area Coordination to be equipped in understanding, recognising, responding and referring women to appropriate agencies such as family violence, legal and sexual assault services.⁸⁴

3.111 Submitters also noted that NDIA representatives involved in the planning process may lack the necessary training or qualifications to deliver culturally appropriate services to Aboriginal and Torres Strait Islander participants and participants from culturally and linguistically diverse (CALD) backgrounds.

3.112 In this regard, the Aboriginal Health Council of SA (ACHSA) Ltd noted that many of the communities it represents continue to experience culturally inappropriate services, with the result that many Aboriginal people have disengaged from the NDIS.⁸⁵ ACHSA further noted that:

...there have been failures in the ability of Planners to understand the complex needs of Aboriginal People and their families...Planners are either

⁸³ Allied Health Professions Australia, *Submission 74*, [p. 3].

⁸⁴ Women with Disabilities Victoria, *Submission 7*, p. 9.

⁸⁵ Aboriginal Health Council of SA Ltd, *Submission 118*, p. 3.

too rigid in their questioning/interviews or simply do not have the understanding and ability to support in these complex situations.⁸⁶

3.113 The National Aboriginal Community Controlled Health Organisation (NACCHO) echoed these concerns, and recommended that all planners and NDIA staff be required to complete a minimum level of cultural awareness training, with an accredited certificate being NACCHO's preferred option.⁸⁷

3.114 AMPARO Advocacy further noted a 'vast difference in the competency of planners', and raised concerns that many planners appeared to have little or no experience in working with people from CALD backgrounds with disability, with many planners having no knowledge of how to work effectively with qualified interpreters. At the committee's public hearing in Brisbane, AMPARO elaborated on these issues, noting that:

The NDIA has improved their processes, we're really pleased to say. Unfortunately they've done almost nil to promote those processes. We still have LACs, NDIA staff, early-intervention staff, service providers and support coordinators contacting us. Through discussions, we find out that they think that an interpreter isn't available or that somebody's got to pay for the interpreter.⁸⁸

Committee view

3.115 The committee considers that rigorous, comprehensive and ongoing training is essential for all persons involved in the planning process, to ensure that the varied and complex needs of participants are fully understood and to ensure that participants receive the supports they require to achieve their goals.

3.116 The committee acknowledges that work to improve training for NDIA staff is underway or has been completed, and notes that this training aims to improve officers' understanding of different disability types and to ensure that staff are able to deliver better services to participants from Aboriginal and Torres Strait Islander communities and from CALD backgrounds.⁸⁹ This work has also been acknowledged by a number of submitters to the inquiry.

3.117 However, evidence before the committee indicates that additional training remains necessary to ensure that planners understand the diverse experiences of NDIS participants—particularly those with complex support needs, and to ensure that service delivery is consistent, effective and culturally appropriate.

⁸⁶ Aboriginal Health Council of SA Ltd, *Submission 118*, p. 4.

⁸⁷ National Aboriginal Community Controlled Health Organisation, *Submission 119*, [p. 6].

⁸⁸ Ms Maureen Fordyce, Manager, AMPARO Advocacy, *Proof Committee Hansard*, 8 October 2019, p. 39.

⁸⁹ See, for example, NDIA, *Pathways Program as of June 2019*.

Recommendation 9

3.118 The committee recommends that the National Disability Insurance Agency (NDIA) ensure that additional training and skills development is provided to all persons involved in the planning process (particularly NDIA officers and LACs), to ensure that all such persons:

- **are familiar with a range of disabilities experienced by participants, and develop specialisation in particular disability areas;**
- **are familiar with allied health expertise;**
- **understand the specific needs of Aboriginal and Torres Strait Islander participants, and participants from culturally and linguistically diverse backgrounds, to ensure that they are able to deliver culturally appropriate services; and**
- **receive training in domestic violence awareness.**

Plan gaps

3.119 A number of submitters to the inquiry raised concerns in relation to the incidence and severity of 'gaps' in participants' plans. Submitters held various views on what may constitute a 'gap' in a plan, noting that a gap may occur where a plan comes to an end prior to a scheduled plan review, where funding under a plan is exhausted prior to the plan review date, and where additional funding cannot be secured following a change in circumstances.

3.120 In relation to some of the causes of plan gaps, Ms Parkinson-Cumine, on behalf of Li-Ve Tasmania, noted that:

...unscheduled plan reviews and review of reviewable decisions are subject to long delays, with participants waiting over three months, and often longer, for assessment. Scheduled plan reviews often do not proceed in a timely manner, creating plan gaps where there are no current plans or where plans have been extended without appropriate funds being added. Payments are then requested from provider payments, with payments taking months to be made.⁹⁰

3.121 With regard to the frequency of plan gaps and their impact on participants, the Office of the Public Guardian (Tasmania) observed that:

...there are plan gaps between nearly all participants' plans for whom we are appointed as guardian. Invariably, the review process starts just a few weeks before the end of the plan and the subsequent plan is rarely completed and in place until at least a month after the previous plan has expired. This is particularly the case for expensive plans that need higher level approval.

...

⁹⁰ Ms Nicole Parkinson-Cumine, Operations Manager, Li-Ve Tasmania, *Proof Committee Hansard*, 28 October 2019, p. 14.

NDIS service providers are reluctant to provide service without a plan in place and a guarantee of payment; and there are no processes in place for providers to claim payment for service during periods where there is no plan and therefore no current service agreement in place.⁹¹

3.122 Occupational Therapy Australia (OTA) observed that the incidence of plan gaps may be even higher (around 75 per cent). OTA further noted that plan gaps may occur for a number of reasons, including the unavailability of planners, unavailability of participant or support coordinators, or approval delays following a planning meeting.⁹²

3.123 The NDIA submitted that 'gaps' in plans have generally resulted from the original design of its Business System, which did not cater for situations where a new plan was not approved prior to the review date of an existing plan. The NDIA noted that there was a risk of participants' supports being discontinued during these 'plan gaps', as the Business System did not allow providers to claim for supports delivered in the plan gap period until the new plan was approved.⁹³

3.124 The NDIA's submission states that enhancements have been made to its Business System to address this issue:

A business system enhancement was implemented on 1 August 2019 to automatically apply 28 days of funding when the new plan has not been approved at the plan review date in certain circumstances. This enables the participant and NDIA additional time to undertake a plan review and minimises the incidence of plan gaps.

Plans that had expired prior to 3 July 2019 were not included in the auto-extension as generally these participants were unable to be contacted to undertake a plan review. As the ability to provide funding for supports during the gap period remained, the NDIA initiated a process to make contact with the participant to undertake a plan review, rather than automatically increasing their funding to mitigate the risks to the NDIA.

On the 31 August 2019, a further enhancement was implemented to remove the exception cases so all participants and providers will now be able to claim for all supports delivered in accordance with their plan while waiting for their plan review.⁹⁴

3.125 The NDIA asserts that the enhancements mean that plan gaps should no longer be an issue for participants and providers.⁹⁵

⁹¹ Office of the Public Guardian (Tasmania), *Submission 59*, pp. 5–6.

⁹² Occupational Therapy Australia, *Submission 23*, p. 8.

⁹³ National Disability Insurance Agency, *Submission 20*, p. 6.

⁹⁴ National Disability Insurance Agency, *Submission 20*, p. 7.

⁹⁵ National Disability Insurance Agency, *Submission 20*, p. 7.

3.126 Other submitters acknowledged this work, but noted that it did not appear to address issues associated with whether a plan is appropriate. For example, the Commonwealth Ombudsman noted that:

...the automatic extension to plans does not address concerns about whether the plan is appropriate. Given the short period since the implementation of this process, we will continue to monitor these changes and any impact on complaints made to the Office.⁹⁶

Committee view

3.127 Throughout this inquiry, the committee has heard a substantial amount of evidence regarding the incidence and severity of plan gaps, which appear to be limiting the ability of participants to accessing necessary supports, reducing choice and control, and undermining the proper administration of the scheme.

3.128 The committee acknowledges that the NDIA has implemented enhancements to its Business System, to extend funding for a further 28 days in circumstances where a new plan has not been approved at the plan review date. The committee welcomes these improvements, and considers that they may go at least some way to ensuring continuity of supports for NDIS participants.

3.129 However, in light of the evidence presented to the committee regarding delays in plan approvals and review processes, the committee considers that a 28 day extension of funding may not be sufficient to ensure that funding for supports remains in place until a new plan is approved. Further, the extension of a plan may not address concerns regarding whether funding remains appropriate.

3.130 The committee considers that where a new plan has not been approved by the plan review date, funding under the existing plan should be automatically extended until the new plan is approved. The committee is also mindful of ensuring that the NDIS does not take a 'set and forget' approach to planning, particularly in relation to participants who have complex support needs or where there is potential for further capacity-building. The committee therefore considers that a plan review should be conducted, and a new plan should be approved, as soon as possible after the plan review date.

Recommendation 10

3.131 The committee recommends—in circumstances where a new plan has not been approved at the plan review date—that:

- **the National Disability Insurance Agency continue to provide funding under the existing plan until the new plan is approved; and**
- **ensure that a plan review is carried out within 45 days of the review date set out in the existing plan.**

⁹⁶ Commonwealth Ombudsman, *Submission 110*, p. 4.

First plan approvals

3.132 Throughout the inquiry, the committee heard evidence regarding delays in the approval process, particularly in relation to the approval of first plans. The evidence suggested that while steps have been taken to address the issue, approval timeframes are still not meeting the expectations of participants, their carers and families.

3.133 With regard to this matter, the NDIA's most recent Quarterly Report states:

first plans are being approved more quickly after an access decision has been made. First plans completed in the September month were completed in 88 days on average compared with 133 days in June 2019. Further, outstanding first plans have been in progress for an average of 79 days at 30 September 2019 compared with 155 days at 30 June 2019.⁹⁷

Committee view

3.134 The committee appreciates that steps have been taken to improve the planning process, and that the timeframes for plan approval have been reduced relative to the last quarter. However, the committee remains concerned that NDIS participants are still experiencing delays in plan approval, which may be creating barriers to accessing reasonable and necessary supports.

3.135 The committee notes that in June 2019, the Minister for the NDIS, the Hon Stuart Robert MP, announced an initiative to resolve delays and backlogs for children with disability in accessing Early Childhood Early Intervention (ECEI) supports through the NDIS. A key aspect of this initiative was the provision of a standardised, six-month interim plan for participants who have been waiting 50 days or longer for plan approval, with the interim plan replaced by an individualised plan within six months. Participants with complex support needs would also be immediately streamed to an NDIA Early Childhood specialist to develop their plan and appropriate funding package.⁹⁸

3.136 The committee considers that it would be appropriate to implement similar measures in relation to all NDIS participants, to ensure that participants are able to access the supports they need as quickly as possible. As outlined above, the committee heard evidence at its Canberra hearing that participants with complex support needs are assisted by an NDIS official, while participants in other cohorts are generally assisted by an LAC. The committee considers it appropriate for participants with complex support needs to continue to be supported by an NDIA official.

⁹⁷ National Disability Insurance Agency, *COAG Disability Reform Council Quarterly Report*, 30 September 2019, p. 35.

⁹⁸ The Hon Stuart Robert MP, Minister for the NDIS, *Media release: Children to get faster access to NDIS supports*, 26 June 2019, <https://ministers.dss.gov.au/speeches/5266> (accessed 28 November 2019).

3.137 The committee also reiterates that all NDIA representatives involved in the planning process must receive the training and skills development necessary to support participants with complex needs.

Recommendation 11

3.138 The committee recommends, where a plan is not approved within 45 days of receipt by an National Disability Insurance Agency (NDIA) delegate, that:

- **the NDIA immediately approve a typical supports package (TSP) for the participant as an interim measure; and**
- **the NDIA replace the TSP with an individualised plan no later than 45 days after the TSP is approved.**

Recommendation 12

3.139 The committee recommends that all participants with complex support needs be immediately streamed to an National Disability Insurance Agency delegate to develop their plan and appropriate funding package.

Children with acquired injuries and complex care needs

3.140 Some submitters to the inquiry raised concerns that delays in accessing the NDIS and plan approvals were having a particular impact on children with complex care needs and children with acquired injuries.

3.141 In this respect, representatives from the South Australian Child and Adolescent Health Community of Practice recommended that children should be 'treated within a slightly different system within the NDIS', noting that:

There are so many critical points of a child's development that are being missed at the moment. I'm really concerned about this cohort of children in our current environment in terms of the delays that we're seeing for their development and the impact on this group of children going forward.

...

I think the other issue with children is the complexity. With adults it is probably quite clear what their underlying disability is, but for children, particularly at a young age, it's not that clear. I think it makes it quite clear the difficulties that planners have in that they have to understand really very complicated situations with children, where you have a whole host of issues that are impacting.⁹⁹

3.142 The Community of Practice also noted that processes to transition persons with disability from the state disability sector to the NDIS focussed on children with existing disability, and that children with newly acquired disability had been required to 'join the queue'. Representatives from the Community of Practice stated that:

⁹⁹ Ms Natalie Hood and Dr Liberty Gallus, Committee Members, South Australian Child and Adolescent Health Community of Practice, *Proof Committee Hansard*, 19 November 2019, p. 38.

For many years we have advocated that children who have a newly acquired disability be treated as a priority...and yet we had absolutely no inroads into considering the option that they would be able to come up the queue or come up the priority order.

...

[T]he delays have been felt the entire time. There has been no improvement in the time frames of being made eligible for the scheme. We have a number of examples where a child with severe brain injury has taken three or four months to even get accepted onto the scheme and then had to wait another month or two to actually get a planning meeting.

...

[I]n terms of the health service, the pressure is on length of stay and ensuring that children are exiting hospital and not in hospital once they've become medically stable...the priority is to get them home and into their home environment, but, if they need home modifications or changes to their home due to the change in function that they've had, the delays that we're experiencing are significant and it is backing the system up. These children are being held in hospital far longer than they need to be.¹⁰⁰

Committee view

3.143 The evidence before the committee indicates that children with acquired disability, and children with complex needs, are underserved by the NDIS, and that delays in accessing the scheme and obtaining plan approvals may be limiting access to reasonable and necessary supports.

3.144 In light of these matters, the committee considers that a mechanism is required to prioritise these cohorts in appropriate circumstances, particularly to avoid lengthy stays in the hospital systems and to ensure that they are able to access supports as quickly as possible.

Recommendation 13

3.145 The committee recommends that the National Disability Insurance Agency develop and implement a mechanism to prioritise access decisions, plan meetings and plan approvals for children with complex needs and/or an acquired disability.

Transport

3.146 A number of submitters to the inquiry noted that funding for transport under the NDIS was not meeting the expectations of participants, particularly with regard to participants in regional or remote areas. For example, the submission by the Tasmanian Government noted that:

The NDIS assessment of need in relation to transport supports has, for many Tasmanian participants, resulted in a reduced capacity to travel: to

¹⁰⁰ Ms Natalie Hood, Committee Member, South Australian Child and Adolescent Health Community of Practice, *Proof Committee Hansard*, 19 November 2019, pp. 35–36.

work or place of study; to access funded supports; and to participate in community events or recreational activities. This has greatly affected participants' quality of life and has been the cause of significant dissatisfaction both within the Tasmanian disability sector and the broader community in Tasmania.¹⁰¹

3.147 Participants noted that the difficulties associated with transport often resulted from a lack of flexibility in plans regarding how funding may be used, as well as from a lack of funding for transport more generally. For example, Mr Matt Law, Chief Financial Officer, Cara, noted that:

There are situations where a customer or participant has sufficient funding in their core for the supports that they require but, because there is no flexibility to use it for transport, they can't use a component of that funding to get where they would receive the supports, so they end up not accessing the supports at all. Yes, they would lose some of that element that was for supports if they had to use that money for vehicle costs and transport but at least they would be accessing the supports.¹⁰²

3.148 Mr Law recommended both that flexibility in plans be increased to enable participants to use core funding for transport costs, and that funding for transport be increased.¹⁰³

Committee view

3.149 In light of the evidence before it, the committee is concerned that the current NDIS may not be giving participants adequate access to transport services, and that this is leading to difficulties accessing other reasonable and necessary supports and participating fully in community activities. The committee acknowledges that this is a particular problem for participants in rural and regional areas, who may need to travel longer distances to access services.

3.150 As noted earlier, the COAG Disability Reform Council (the Council) has endorsed an approach to improve provision of transport services under the NDIS, including measures to increase transport funding for participants who are significant users of taxi subsidy schemes.¹⁰⁴

3.151 The Minister for the NDIS, the Hon Stuart Robert MP, noted that he will work with his state and territory colleagues to monitor the implementation of the Council's decisions, to ensure they provide clarity and good outcomes for NDIS participants. The minister also noted that government would aim to remove the distinction between core and capacity building funding in plans

¹⁰¹ Tasmanian Government, *Submission 117*, p. 11

¹⁰² Mr Matt Law, Chief Financial Officer, Cara, *Proof Committee Hansard*, 19 November 2019, p. 2.

¹⁰³ Mr Matt Law, Chief Financial Officer, Cara, *Proof Committee Hansard*, 19 November 2019, p. 2.

¹⁰⁴ Disability Reform Council, *Communique*, 9 October 2019, p. 1.

from July 2020, so that participants and their families could use plan funding more flexibility on the supports that best meet their needs.¹⁰⁵

3.152 The committee welcomes these measures, and is optimistic that they will help improve the provision of transport services under the NDIS. However, the committee remains concerned that the measures proposed by government may not be sufficient to ensure the NDIS meets the transport needs of participants in the shorter term. The committee therefore considers that the NDIA should implement a mechanism to allow participants to pay for transport out of core funding as a matter of urgency.

Recommendation 14

3.153 The committee recommends that the National Disability Insurance Agency immediately implement a mechanism to allow participants to pay for transport out of core funding.

¹⁰⁵ The Hon Stuart Robert MP, Minister for the NDIS, *The NDIS Plan, The Hon Stuart Robert MP, The NDIS Plan*, speech delivered at the National Press Club, 14 November 2019, <https://ministers.dss.gov.au/speeches/5266> (accessed 22 November 2019)

Chapter 4

Other matters

4.1 This short chapter provides a brief overview of issues raised by submitters and in witness testimony that the committee has not yet had time to examine in detail, and notes some of the measures taken by government to improve the operation of the planning process and the National Disability Insurance Scheme (NDIS) more generally.

Other matters raised

4.2 Outlined below is a sample of issues identified during the present inquiry that the committee has not had the time to consider in detail. Key issues include:

- barriers to accessing the NDIS—in particular, the complexity of the Access Request Form and difficulties obtaining evidence to support an application;
- processes for triaging children, people with acquired disability and people with life-limiting conditions;
- planning support for Aboriginal and Torres Strait Islander peoples, and for people from culturally and linguistically diverse (CALD) backgrounds;
- support for people accessing the NDIS through advocacy organisations;
- supported decision-making for people with cognitive disability;
- support for pre-planning and plan implementation;
- participants and providers in rural and regional areas—including participant access to supports in thin markets;
- assistance, guidance and support for self-managed participants;
- support for NDIS providers;
- planning and access for people with psychosocial disability;
- workforce matters, including staff, resourcing and training; and
- contractual arrangements between the NDIA and Local Area Coordinators.

4.3 The committee will consider these issues, and additional evidence relating to matters outlined elsewhere in this report, in the coming months, and proposes to present a more detailed report to the Parliament in 2020. This final report will include additional recommendations to improve the planning process.

Ongoing work to improve the planning process

4.4 As outlined in previous chapters, a number of measures to improve the operation of the planning process, and the operation of the NDIS more broadly, have either been implemented or are in progress.

4.5 These initiatives include the 'soft launch' of joint planning, the Tune Review and development of the Participant Services Guarantee, and the service improvements implemented as part of the NDIA's Pathways program.

4.6 The committee considers that more time is needed to observe whether these initiatives will be effective in improving the planning process.

Hon Kevin Andrews MP
Chair

Senator Carol Brown
Deputy Chair

Appendix 1

Submissions

Submissions

- 1 Amicus Group Inc
- 2 Autism Family Support Association
- 3 Multiple Sclerosis Australia
- 4 CPSU
- 5 Autism Spectrum Australia
- 6 Blind Citizens Australia
- 7 Women with Disabilities Victoria
- 8 SA Child and Adolescent Health Community of Practice
- 9 Disability Council NSW
- 10 Deafness Forum of Australia, Deafblind Australia, Audiology Australia, Able Australia, Senses Australia and Neurosensory
- 11 Maurice Blackburn Lawyers
- 12 Samaritans Foundation
- 13 National Mental Health Commission
- 14 DARE Disability Support
- 15 Queenslanders with Disability Network
- 16 Public Service Research Group UNSW Canberra
- 17 Syndromes Without A Name (SWAN) Australia
- 18 Able Australia, Senses Australia, Deafblind Australia
- 19 Northcott
- 20 National Disability Insurance Agency
- 21 Prader-Willi Syndrome Association of Australia Inc
- 22 Alliance20
- 23 Occupational Therapy Australia
- 24 Early Start Australia
- 25 Leadership Plus Inc
- 26 Disability Advocacy Victoria
- 27 Vision Australia
- 28 Dietitians Association of Australia
- 29 AMPARO Advocacy
- 30 Physical Disability Council of NSW
- 31 Rights Information and Advocacy Centre
- 32 Joint Dynamics Pty Ltd
- 33 Speech Pathology Australia
- 34 Cerebral Palsy Education Centre
- 35 Independent Audiologists Australia Inc (IAA)
- 36 Huntingtons Queensland

- 37 The Royal Australian College of General Practitioners
- 38 Cara Inc
- 39 Uniting Vic.Tas
- 40 AEIOU Foundation
- 41 NSW Trustee& Guardian
- 42 ATSA
- 43 Plumtree Children's Services
- 44 MND Australia
- 45 National Disability Services
- 46 Exercise and Sports Science Australia
- 47 Sharing Places Inc
- 48 Public Interest Advocacy Centre
- 49 Community Mental Health Australia
- 50 Integra
- 51 Cobaw Community Health
- 52 Association for Children with Disability
- 53 Vision 2020 Australia
- 54 National Legal Aid
- 55 Identitywa
- 56 St Vincent's Hospital Melbourne
- 57 Royal Institute for Deaf and Blind Children
- 58 ADACAS
- 59 The Office of the Public Guardian (Tasmania)
- 60 Deaf Services
- 61 Dr Darren O'Donovan
- 62 Hear and Say
- 63 Irabina Autism Services
- 64 Novita
- 65 Kyabra Community Association
- 66 Brightwater Care Group
- 67 Epilepsy Action Australia
- 68 Somerville Community Services
- 69 Intervention Services for Autism and Developmental Delay (ISADD)
- 70 Advocacy for Inclusion
- 71 Autism Aspergers Advocacy Australia
- 72 Services for Australian Rural and Remote Allied Health (SARRAH)
- 73 Brotherhood of St Laurence
- 74 Allied Health Professions Australia (AHPA)
- 75 Calling The Brain's Bluff
- 76 Noah's Ark Inc
- 77 Early Childhood Intervention Australia Victoria/Tasmania (ECIA VIC/TAS)
- 78 Australian Lawyers Alliance
- 79 Orthoptics Australia

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- 80 Australian Orthotic Prosthetic Association (AOPA)
 - 81 Spinal Cord Injuries Australia
 - 82 First Voice
 - 83 Every Australian Counts
 - 84 ConnectAbility Australia
 - 85 Scope (Aust) Ltd
 - 86 Amaze
 - 87 Queensland Advocacy Incorporated
 - 88 Office of the Public Advocate (Victoria)
 - 89 Carers NSW
 - 90 Children and Young People with Disability Australia
 - 91 National Rural Health Alliance
 - 92 Audiology Australia
 - 93 People With Disabilities (WA)
 - 94 Australian National Audit Office
 - 95 The Housing Connection
 - 96 *Name Withheld*
 - 97 *Name Withheld*
 - 98 *Name Withheld*
 - 99 *Name Withheld*
 - 100 *Name Withheld*
 - 101 Mr Peter Rankin
 - 102 *Name Withheld*
 - 103 roundsquared
 - 104 Healthy Minds
 - 105 The Royal Australasian College of Physicians
 - 106 Australian Association of Social Workers
 - 107 Mental Illness Fellowship of Australia
 - 108 Family Advocacy
 - 109 Kelmax Disability Services
 - 110 Commonwealth Ombudsman
 - 111 Young People in Nursing Homes National Alliance
 - 112 Australian Services Union
 - 113 Western Australian Department of Communities
 - 114 Office of the Public Guardian (Qld)
 - 115 Australian Psychological Society
 - 116 Northern Territory Office of the Public Guardian
 - 117 Tasmanian Government
 - 118 Aboriginal Health Council of SA Ltd
 - 119 National Aboriginal Community Controlled Health Organisation
 - 120 Purple Orange
 - 121 Yooralla
 - 122 Ms Karin Mead

- 123 Ms Catherine Hogan
- 124 Mr Mark Toomey
- 125 *Name Withheld*
- 126 *Name Withheld*
- 127 Making Connections Together
- 128 Mrs Corinne Pisanu
- 129 *Name Withheld*
- 130 Mrs Kylie Paull
- 131 *Name Withheld*
- 132 *Name Withheld*
- 133 Ms Val Johnstone S
- 134 Mx Ricky Buchanan
- 135 *Name Withheld*
- 136 Dr Amy Wilson
- 137 *Name Withheld*
- 138 *Name Withheld*
- 139 *Name Withheld*
- 140 Mr Douglas Herd
- 141 *Name Withheld*
- 142 Ms Shayna Gavin
- 143 Ms Annette Anderson
- 144 Mr Ian Anderson
- 145 Ms Sarah Tocker
- 146 Ms Micheline Lee
- 147 Australian Music Therapy Association
- 148 Ms Linda Bone
- 149 Ms Karen Clifford
- 150 Carers Victoria
- 151 *Name Withheld*
- 152 NDIS Consumer Watch
- 153 *Name Withheld*
- 154 MND And Me Foundation Limited
- 155 Ms Shannon Manning
- 156 Mr Stephen and Ms Leslee Fleming

Appendix 2

Public hearings

Tuesday, 8 October 2019

Undumbi Room
Queensland Parliament
2A George Street
Brisbane

Every Australian Counts

- Ms Kirsten Deane, Campaign Director
- Mr Peter Tully, Every Australian Counts Champion

AEIOU Foundation

- Mr Alan Smith, Chief Executive Officer
- Mr Sean Redmond, NDIS Co-ordinator
- Mr Greg Johnson, General Manager

Assistive Technology Suppliers Australia (ASTA)

- Mr David Sinclair, Executive Officer
- Mr Ian Rothall, ATSA Director
- Ms Tiffany Heddes, ATSA Member

Vision Australia

- Ms Caitlin McMorrow, Operations Lead
- Ms Karen Knight, General Manager QLD, NSW, NT, Government Relations and Advocacy

Deaf Services

- Mr Brett Casey, Chief Executive Officer
- Ms Michelle Crozier, NDIS Project Manager

AMPARO Advocacy

- Ms Maureen Fordyce, Manager

Queensland Advocacy Incorporated

- Ms Michelle O'Flynn, Director
- Dr Nick Collyer, Systemic Advocacy
- Dr Emma Phillips, Senior Lawyer - Law Reform & Systems Advocacy

Queenslanders with Disability Network

- Ms Paige Armstrong, Chief Executive Officer

Disability Connect Queensland, Department of Communities, Disability Services and Seniors

- Mr Max Wise, Assistant Director-General
- Ms Alison Bennett-Roberts, Director of Inclusion, Engagement and Assurance

Town Hall session

- Mr John Raine, Private capacity
- Mr Chris McCarthy, Chief Executive Officer, Hear and Say
- Ms Michelle King, Private capacity

Wednesday, 9 October 2019

Portside Centre

Level 5, 207 Kent Street

Sydney

Alliance20

- Mr Drew Beswick, Chief Executive Officer, Oak Possability
- Mr Stephen Doley, Director Disability and Aged Care NSW/ACT, Life Without Barriers

Northcott

- Ms Aleta Carpenter, General Manager Supported Living
- Ms Rachel Parker, Claiming and Compliance Manager

Disability Council NSW

- Mr Mark Tonga, Disability Council Chair
- Ms Rachael Sowden, Disability Council member
- Mr Jake Fing, Disability Council member
- Mr Paul Zeller, Disability Council member

Public Interest Advocacy Centre

- Mr Jonathon Hunyor, Chief Executive Officer
- Mr Chadwick Wong, Senior Solicitor

DARE Disability Support

- Mr Andrew Daly, Chief Executive Officer

Monday, 28 October 2019

Committee Room 1
Tasmanian Parliament
Cnr Salamanca Place & Murray Street
Hobart

Ms Jane Wardlaw, Private capacity

HOPES

- Ms Alison Jacob, President
- Ms Sue Hodgson, Vice President

Li-Ve Tasmania

- Mr Paul Byrne, Chief Executive
- Mrs Nicole Parkinson-Cumine, Operations Manager

Access2Choice Tasmania Pty Ltd

- Ms Pauline Stanton, Director
- Mr Phillip Drury, Consultant

Office of the Public Guardian

- Ms Kim Barker, Public Guardian
- Ms Maddy Russell, Senior Guardian

Tasmanian Government

- Ms Ingrid Ganley, Director Disability and Community Services
- Ms Carolan Hands, Policy Analyst Department of Premier and Cabinet

Town Hall session

- Ms Rebecca Copeland, Private capacity
- Ms Lisa Denny, Private capacity
- Ms Elise Jeffery, Private capacity
- Mr Warren Lewis, Private capacity
- Ms Kate Polglase, Private capacity
- Mr Peter Rubenach, Private capacity
- Ms Beverley Rubenach, Private capacity
- Ms Amanda Jane Smith, Private capacity

Thursday, 7 November 2019

Stamford Plaza Melbourne

Edinburgh Room

111 Little Collins Street

Melbourne

Women with Disabilities Victoria

- Ms Leah van Poppel, Chief Executive Officer

Uniting Vic. Tas.

- Mrs Tracey Gibson, General Manager, Disability and Mental Health Services
- Ms Sue Gannon, Senior Manager – Disability Residential and Community Services

National Disability Services

- Mr David Moody, Chief Executive Officer
- Ms Philippa Anglely, Head of Policy

Summer Housing

- Mr Daniel McLennan, Chief Executive Officer
- Ms Queenie Tran, Chief Operating Officer

Summer Foundation

- Cathy Bucolo, Clinical Practice Lead

Allied Health Professions Australia

- Ms Gail Mulcair, Chair
- Mr Phillip Hermann, Manager – Policy and Communications

Australian Psychological Society

- Dr Tony McHugh, Senior Policy Advisor

Australian Music Therapy Association

- Ms Bridgit Hogan, Executive Officer
- Ms Michelle Fisher, Disability Advisor
- Dr Melissa Murphy, NDIS Representative

Occupational Therapy Australia

- Ms Andrea Douglas, NDIS Advisor
- Ms Anita Volkert, National Manager, Professional Practice and Development

Maurice Blackburn Lawyers

- Mr Tom Ballantyne, Principal Lawyer

Town Hall session

- Mr George Taleporos, Private capacity
- Ms Karen Clifford, Private capacity
- Ms Linda Bone, Private capacity
- Ms Bianca Brant, Private capacity
- Ms Karen Dimmock, Chief Executive Officer, Children with a Disability
- Ms Marie Sheahan, Private capacity
- Ms Lyn McHugh, Private capacity

Tuesday, 19 November 2019

Diamond Room

Mayfair Hotel

45 King William Street

Adelaide

Cara

- Mr Matt Law, Chief Financial Officer

Novita

- Mr Jeremy Brown, Chief Operating Officer

JFA Purple Orange

- Mr Robbi Williams, Chief Executive Officer
- Mr Geoff Barber, Chief Operating Officer
- Mr David Elston, Policy and Research Leader
- Ms Mikaila Crotty, Policy and Research Leader

First Voice

- Dr Jim Hungerford, Deputy Chair
- Ms Heidi Limareff, Director

Aboriginal Health Council of South Australia Ltd

- Ms Polly Paerata, CQI and Health Policy Coordinator

South Australia Child and Adolescent Health Community of Practice

- Ms Maeve Downes, Deputy Chair
- Ms Natalie Hood, Executive Director (Allied Health) - Women and Children's Health Network
- Dr Liberty Gallus, Member

Darwin Community Legal Service

- Mr David McGinlay, Manager - Seniors and Disability Rights Service

National Disability Insurance Agency

- Mr Sudharsan Raghunathan, Branch Manager - Participant Pathway Design
- Ms Melissa Flanagan, Director - South Australia Service Delivery
- Ms Jamie Lowe, Group Manager - Communications, Media and Marketing

Town Hall session

- Mr Bertato, Private capacity
- Ms Jane Gersch, Private capacity
- Ms Mikaila Taylor, Private capacity
- Ms Kate White, Private capacity

Thursday, 21 November 2019

Main Committee Room

Parliament House

Canberra

National Aboriginal Community Controlled Health Organisation (NACCHO)

- Ms Patricia Turner, Chief Executive Officer

Services for Australian Rural and Remote Allied Health (SARRAH)

- Dr Kim Bulkeley, Board Director
- Mr Allan Groth, Director, Policy and Advocacy

National Rural Health Alliance

- Dr Gabrielle O'Kane, Chief Executive Officer

Australian National Audit Office (ANAO)

- Mr David Brunoro, Executive Director, Performance Audit Services Group
- Ms Rebecca Reilly, Executive Director, Assurance Audit Services Group

Commonwealth Ombudsman

- Mr Michael Manthorpe, Commonwealth Ombudsman
- Ms Jaala Hinchcliffe, Deputy Commonwealth Ombudsman
- Ms Fiona Sawyers, Senior Assistant Ombudsman
- Ms Julia Taylor, Director of Disability and Business Intelligence

National Legal Aid

- Ms Jackie Finlay, Senior Solicitor Civil Law Division Legal Aid NSW
- Ms Lindsay Ash, Senior Solicitor NDIS, Legal Aid NSW

National Mental Health Commission

- Ms Sandra Ofei-Ferri, A/g Director, Mental Health Reform
- Mr Marcus Nicol, Director, Monitoring and Reporting

Mental Illness Fellowship of Australia

- Mr Tony Stevenson, Chief Executive Officer

Department of Social Services

- Mr Michael Lye, Deputy Secretary, Disability and Carers
- Mr Peter Broadhead, Group Manager, Participants and Performance
- Mr Andrew Whitecross, Group Manager, Participants and Performance

National Disability Insurance Agency

- Ms Vicki Rundle, Deputy Chief Executive Officer, Participant and Planning Experience
- Mr Scott McNaughton, A/g Deputy Chief Executive Officer, Government, Communication and Stakeholder Engagement
- Mr Hamish Aikman, Head of People and Culture
- Ms Liz Neville, A/g Head of Markets, Provider Sector Development

Town Hall session

- Mr Bill Aldcroft, Private capacity
- Ms Shaun Cahill, Private capacity
- Mr James Collins, Private capacity
- Ms Michelle Hansen, Private capacity
- Mr Dougie Herd, Private capacity
- Ms Karna O'Dea, Private capacity
- Ms Sarah Mamalai, Private capacity
- Mr Mark Newman, Private capacity