



Productivity Commission's draft Disability Care and Support Report

OVERVIEW

The Productivity Commission recently released its draft Disability Care and Support inquiry report (the Report), with comments in response to the Report due by 30 April 2011.¹ The Report describes the current disability support system as underfunded, unfair, fragmented, and inefficient - giving people with a disability little choice and no certainty that they will get the support they need.

The Report's key proposal is to create the National Disability Insurance Scheme (NDIS), which would be similar to Medicare in that all Australians would be assured of long-term care and support if they acquire a significant disability as a result of a medical condition or illness.

The Report also proposes a much smaller scheme would cover people's lifetime care and support needs if they acquired a catastrophic injury from any accident. It would be based on widening and strengthening existing state and territory schemes.²

What is the NDIS proposed to do?

The Productivity Commission proposes that the NDIS have three main functions, corresponding to three different populations of 'customers'. They are:

1. minimising the impact of disability by promoting opportunities for people with disability and creating awareness of issues that affect people with disability;
2. information and referral services; and
3. provision of funded individualised supports.³

The third tier is targeted to people with support needs that would otherwise not be reasonably met without taxpayer funding, and that are not more appropriately met by other systems, like the healthcare system. The

¹ Available at: <http://www.pc.gov.au/projects/inquiry/disability-support/draft>

² A New System for Disability Care and Support, Productivity Commission media release, accessed 14 March 2011 and available at: <http://www.pc.gov.au/projects/inquiry/disability-support/draft/media-release>

³ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.1

third tier is the level at which people living with HIV may benefit in particular, and is of prime interest to AFAO and its membership. The NDIS is not intended to provide coverage for disability as a natural result of ageing.⁴

Criteria for eligibility to receive funded individualised supports

For an individual to qualify for individualised support funding, they would need to be considered to have a 'severe disability'. This means that they must have a 'permanent disability' (or if not permanent, expect to require very costly disability supports).

It is difficult to understand why having a 'severe disability' should be an eligibility factor for a person to receive tier 3 NDIS support. Including such a requirement may effectively operate to preclude some people with disability associated with multiple chronic medical conditions, such as HIV-related co-morbidities, from further assessment. The other eligibility criteria listed in the Report appear to be more flexible and appropriate. Under these criteria, a person would be eligible for tier 3 NDIS support, if they:

1. have significant limitations with communications, mobility or self-care; or
2. have an intellectual disability; or
3. be in one of two early intervention groups. One group would be those for whom there was a reasonable potential for cost-effective early interventions that would improve their level of functioning (as in autism, acquired brain injury, cerebral palsy and sensory impairments). The other would be those with newly diagnosed degenerative diseases, such as Multiple Sclerosis and Parkinson's disease, for whom early preparation would enhance their lives; or
4. would have large identifiable benefits from support that would otherwise not be realised. This takes account of the difficulties in slotting everyone into the specific groups above.⁵

The Report proposes that assessment of whether a person meets these criteria would use the mixture of indicators that best measure support needs, noting that sometimes these will be functional measures, sometimes condition-based measures, and sometimes hybrid approaches. The Report states that functional definitions of 'mild' disability should encompass a very broad group, many of whom would not require NDIS-funded supports but that some people categorised as having a 'mild' intellectual disability would benefit from some ongoing support in areas such as interpersonal relations, learning, work, accommodation and community life.

The Report does not give consideration to assessment tools for 'measuring' disability. There is also no discussion of what agency would conduct assessments.

⁴ Productivity Commission, Disability Care and Support Issues Paper May 2010, p. 19, available at: http://www.pc.gov.au/data/assets/pdf_file/0007/98026/issues.pdf

⁵ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.1

The NDIS and people living with HIV

Though the NDIS is not intended to cover people who acquire a disability as a result of natural ageing⁶, this would not preclude eligibility for people with disability due to conditions associated with HIV-related premature or accelerated ageing. People living with HIV with high care needs may potentially fit under a number of the eligibility criteria, including 'significant limitations with self-care'. PLHIV with disabling conditions such as dementia, chronic heart disease or frailty caused by multiple chronic co-morbidities, may also fit as an early intervention group (condition 3, above), thereby potentially attracting 'cost-effective early interventions that would improve their level of functioning'. Identifying and detailing the specific high-level care needs of PLHIV should assist in getting the proposed NDIS to provide coverage to PLHIV.

The NDIS and other service delivery

The Report states that not all who meet the criteria will receive individualised support from the NDIS. For example, some will be supported by palliative or aged care, others will be captured by the 'sister scheme' of the NDIS, the National Injury Insurance Scheme (NIIS). It will be important to make clear where these boundaries lie. To address any gaps, it is proposed that the NDIS proactively seek memoranda of understanding with the physical health, mental health, palliative and aged care sectors, so that individuals do not 'fall between the cracks' of the respective schemes.

Aged care system

A large group of people with a disability will get their support through the aged care system rather than the NDIS or NIIS. While in the main the clients of the aged care system are people who acquire a disability or frailty because of natural ageing, the system also currently funds and supports many older people who acquired a disability prior to the pension age. While recognising many similarities between the conventional disability system and the aged care system, the Report highlights differences between them, such as in philosophy, employment and participation goals, and differences in fair and efficient funding sources, thus concluding that the systems should be integrated but ultimately stay separate.⁷

To ensure their best integration from an individual/end-user viewpoint, the Productivity Commission proposes two options.⁸ The first option is that regardless of when or how people acquired their disability, and irrespective of which system they elected to be in:

- the NDIS would fund the care and support needs of people aged up to the pension age, including for disability arising from age-related conditions like strokes and early onset dementia (thus potentially covering people with severe disability associated with HIV-related conditions); and
- the aged care system would fund the care and support needs of all people over the pension age. If a person elected to stay in the NDIS, the assessment tools from that system would be used to determine

⁶ Productivity Commission, Disability Care and Support Issues Paper May 2010, p. 19, available at http://www.pc.gov.au/data/assets/pdf_file/0007/98026/issues.pdf

⁷ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.18

⁸ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.20

their funding. This would ensure that people who acquired a disability before the pension age would have the assurance that they would not get a different level of care and support.

A second option would be for the NDIS to continue to fund people with an earlier acquired disability *after* the pension age, but with the aged care system funding the *incremental* support costs associated with natural ageing. The first option, the simplest, is the Productivity Commission's preferred option. The Productivity Commission is interested in feedback on funding approaches.

Health system

The Productivity Commission recommends that primary care and hospital (in-patient and out-patient) based services and medical and pharmaceutical products remain outside the scope of the scheme. Many health conditions, such as cancer, heart disease and diabetes, result in functional limitation. Some have proposed to the Productivity Commission that coverage under the NDIS extend only to those disabilities that are not the result of chronic disease processes and that a diagnostic, as well as functional definition, be applied to exclude people with chronic health conditions, while others argued a broader approach of including people with chronic illness, where their condition requires long-term support and care activities of daily living.⁹

The Productivity Commission proposes that the NDIS agree to memoranda of understanding with the health sectors in each state to ensure that the health, care and support needs of individuals with chronic and progressive health conditions are met in an integrated fashion and adequate incentives existed for investments in research, prevention, early intervention and timely service delivery in appropriate circumstances.

Mental health

Similar to aged care, while there is overlap between mental health and disability services, there are also significant differences, both in terms of the dynamics of each, and availability of support services. Mental health conditions do not necessarily result in disability. Around 917 000 people reported having a mental health condition in the 2003 Survey of Disability, Ageing and Caring. Of those individuals who reported mental health as their primary condition (some 446 000 people), only 214 000 had a disability (around 70 per cent had core activity limitations, while the remaining 30 per cent were restricted in non-core areas, such as schooling and employment).¹⁰ At present, the disability and mental health sectors are largely separate. (While in some jurisdictions, they are funded by the same departments, operationally, they are distinct service areas). Services appear to be poorly coordinated between the two.

The current lack of integration between the two sectors disadvantages people with multiple disabilities in particular. The Report proposes allocation of responsibility where the responsibilities are reasonably clear, according the principle that each sector should focus on their area of comparative expertise. So for example, the mental health sector would be responsible for:

- specialised services such as psychology, psychiatry (which would include early intervention), acute and inpatient services and pharmaceuticals for all types of mental illness; and
- provision of all services to people with non-permanent mental illnesses (such as many affective disorders).

⁹ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.22

¹⁰ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.25

The NDIS would have a significant role in meeting the support needs of individuals with a dual disability, such as those with an intellectual disability and a mental illness.¹¹

The Report seeks feedback in relation to where the boundaries should be drawn with chronic psychiatric disability, such as schizophrenia. The Report identifies that the mental health system is generally under-resourced currently in providing support to people with mental illness and asks how much the NDIS should be expected to cover for this. It also recognises that the mental health system is under review and this may effect where boundaries should be drawn.

Palliative care

The Report states that individuals in the final stages of their life traditionally receive palliative, or end of life care share some common care needs with those with a disability and both should have their needs met in a sensitive manner. However those with terminal illness might also require:

- care focused on making the individual comfortable, including medications and treatments to control pain and other symptoms; and
- services for themselves or their families to help deal with the medical, psychological and spiritual issues surrounding dying.

The Commission recommends the following arrangements for individuals with terminal conditions. Where an individual:

- first approached the scheme for individually funded support after their terminal condition had become sufficiently advanced, such that they were in the very final stages of their life, they would be referred to the palliative care sector. (The NDIS would have a role in connecting such people to palliative care services. For example, that might involve helping identify the relevant provider in their area.)
- was in receipt of individually funded support and their condition subsequently deteriorated such that they were in the final stages of their life, they would continue to have their care and support needs met by the NDIS. The NDIS would source, and the palliative care sector would fund, any specialist services to address their palliative aspect of their care needs. Such an approach would ensure continuity of care in the individual's final stages of life.¹²

Implementation Issues

According to the Report, while current users of National Disability Administrators (NDA) services will overwhelmingly receive funded supports under the NDIS, the same may not be true of all Home and Community Care (HACC) users.¹³ HACC services currently cover a wider range of individuals than are the target of funded supports under the NDIS. While 'high-level' HACC users (those who receive more than one hour of support per day) would be covered by the scheme, there will be some instances where some 'low-level' HACC users would not get the same level of services using the NDIS assessment criteria. It is impossible to determine the numbers involved since so little is known about the characteristics of current HACC users, including the nature and

¹¹ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.25

¹² Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.30

¹³ Productivity Commission, Disability Care and Support Draft report, "Who is the NDIS for", p. 3.32 and 3.33

severity of their disabilities. Consideration will need to be given, at the time, to what arrangements would be appropriate in these instances. Agreed arrangements should be reflected in the MOU with the health sector.

This raises the question of whether a so-called 'no-disadvantage' test should apply. The Report appreciates the intrinsic appeal to current service users in no disadvantage tests and that people would seek some undertaking that they be no worse off under new arrangements. However, beyond the much greater funding of the NDIS, a further protection against the risk of losing supports is that the nature, frequency and intensity of a person's support needs would comprehensively and objectively assessed. The assessment process would be person-centred and forward looking. It would consider the supports that would allow a person to fulfil a range of functions, rather than only respond to what an individual cannot do.

In that context, the Commission does not consider that 'no disadvantage' tests would be appropriate. This reflects the practical complexity of such arrangements, the fact that needs change from year to year anyway and their unfairness — given assessment of needs under the NDIS will be objectively based rather than inferred from past service use.

IMPLICATIONS

The introduction of the National Disability Insurance Scheme (NDIS) provides a transformative opportunity to provide long-term care and support for individuals who acquire a significant disability as a result of a medical condition or illness. We need to ensure that in developing the NDIS, it is recognised that people living with HIV who have disability associated with living long-term with HIV are covered by the Tier 3 support proposed under the NDIS.

The Report usefully proposes that integration of the NDIS with other existing service delivery, such as Aged Care and Mental Health, is essential. To avoid any gaps, the Productivity Commission proposes that the NDIS should require memoranda of understanding with the physical health, mental health, palliative and aged care sectors, so no individual misses out on appropriate care and support.

In its Report, the Productivity Commission stresses that in its view NDIS eligibility should be determined by functional measures, condition-based measures, or a hybrid approach where appropriate. Such an approach is inadequate in respect of HIV and other conditions that are associated with stigma and discrimination. AFAO and its members need to strongly argue that NDIS assessments should incorporate the social model of disability.