

**Developing a new NDIS Agreement between Western Australia and the
Commonwealth: Submission to the Western Australian Government
By: Professor David Gilchrist¹**

1) General

The Western Australian and Commonwealth governments are undertaking negotiations with respect to establishing a new bilateral agreement relating to the National Disability Services Insurance Scheme (NDIS) and its operation in Western Australia.

This process represents an important opportunity for the Western Australian government to reset the NDIS agreement to ensure Western Australian public financial resources are applied to the best effect in support of those people with disability in our community. It is of critical importance as the NDIS is not currently operating effectively.

Additionally, this opportunity lies in the fact that a decade of experience has been gained nationally in the operation of the NDIS and lessons learned can be applied to rectify structural issues that are impacting the efficiency and effectiveness of the Western Australian disability services system, of which the NDIS is a significant part. These issues have been well documented in academic and industry research, and reported accordingly.² As such, the issues we raise, and the recommended responses, are not new to the audience of this paper and are able to be resolved. Further, the levels of under-utilisation demonstrate clearly the reality of the deficiencies in the system. Therefore, we posit that the issues experienced to date are now required to be rectified as part of the bilateral renegotiations.

This document has been prepared by the Not-for-profits UWA Research Team (UWA Business School) in conjunction with those members of the Coalition of Disability Advocacy Organisations in Western Australia listed in the final section below. We have used our experienced gained over the past decade to inform this document which is intended to provide the Western Australian government with an understanding of the highest priority issues negatively impacting the efficiency and effectiveness of the NDIS along with key opportunities that can be pursued by the government in order to meet these challenges. These issues are focused on systemic improvement and specific detail and examples are available should they be of interest.

We are also very keen to confirm that we would be pleased to meet with the state government in order to tease out any of these issues and to discuss further the key recommendations or to provide additional information.

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² See NDIS Green Paper 5: NDIS Industry Literature Summary – A Review of the Collection of Industry, Government and Academic Reports at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3820338

2) Principles

In developing this document, the following principles have served to guide our thinking and contribution:

- People living with disability, their natural supports, the disability services sector and the Western Australian government are all focused on ensuring people with disability live good lives that are meaningful to them, as active citizens in an inclusive community. This includes people having meaningful choice and control and ensuring the providers of services and supports are adequately resourced
- People living with disability, their natural supports, the disability services sector and the Western Australian government, together with the Commonwealth, are all focused on achieving an effective and efficient disability services system in Western Australia and we all recognise that this outcome hinges on the establishment of an effective and efficient NDIS
- It is also recognised that the profound risks facing the disability services system in Western Australia are borne by people living with disability—they bear the impact of inconsistency of information, delays, bad decision making, poor collaboration, uncertainty and inability to control resources
- Public funding must be applied in response to evidence-based policy and practice, transparently accounted for, and prudently deployed
- To that end, continuing challenges created by unclear jurisdictional boundaries and service mandates are no longer tenable or excusable; the experience of the parties involved in the NDIS means that it is possible to identify and rectify these boundary issues and it is all of our responsibilities to work together to do so. Clarity of responsibility, agreed by the Western Australian government as a sovereign government, must be articulated and communicated to all stakeholders effectively.
- Prudent expenditure, evidence-based policy and practice, and efficiency include the deployment of funds using appropriate funding regimes based on the needs being served as determined by those accessing services and includes trusting those making decisions—a one-size-fits-all funding regime is entirely inappropriate for a complex system such as the Western Australian disability services system and any agreement needs to include flexibility of funding as a fundamental NDIS element in the context of the service, cultural and other attributes.
- An effective and efficient disability services system is one that:
 - is enabled to be responsive to the individual needs of the people it supports
 - learns from experience, focuses on medium to longer-term outcomes for people—the significant period over which the NDIS has been operating means that we all have an

- understanding of the nature, causes and needs relating to systemic problems and so their resolution depends on genuine collaboration and intent
- acknowledges that “efficiency” and “cheap” are not synonyms
 - values and builds real and effective collaboration between governments, providers, advocates and people with disability and their natural supports—market rhetoric used in a non-market environment reduces clarity of responsibility and transparency of outcomes. It also misrepresents issues and potential solutions by implying the workings of market mechanisms that do not exist³
 - recognises and pursues the principles enacted in the enabling legislation
 - recognises that the natural supports of people with disability are critical parties in achieving outcomes under the NDIS
 - creates and uses comprehensive data assets and full transparency so that the participants, providers and the community have an understanding of the real performance of the NDIS, are able to learn from the experience and ensure continuous improvement⁴
- The fact that the agreement between Western Australia and the Commonwealth is bilateral means that the very real issues impacting the Western Australian disability services system can be dealt with, regardless of the nature of the Commonwealth’s agreements with other states—this includes in acknowledging and leveraging Western Australia’s long history of effective individualised funding and Local Area Co-ordination (LAC) experience. The Western Australian government should have control commensurate with its contribution to the Scheme.

Therefore, developing a more considered bilateral agreement, utilising our collective experience, will support the sustainability of the state’s disability services system (including the NDIS) and support the state government in meeting its obligations to the Western Australian community.

³ See NDIS Green Paper 4: Demand, Supply & the NDIS – A Matter of Words? At https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3662993

⁴ See NDIS Green Paper 1: Data Assets, Efficiency and the NDIS at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3662985

3) Structural Issues

Before examining specific issues, we provide the following brief overview of the systemic change our experience has identified as necessary in relation to the current, poorly performing NDIS. To that end, we need:

- a true collaborative approach to identifying, mitigating and governing the issues impacting the people accessing the NDIS—this approach would acknowledge openly that the disability services system is highly complex and that challenges and mistakes will arise while changing the system in response to lessons learnt should be undertaken in good faith
- a systemic response to the structural issues identified below, not tinkering around the edges of existing arrangements
- timely and transparent data assets that serve to demonstrate the performance of and lessons learned—good and bad—in the operation of the NDIS’ and support transparent longitudinal comparison to confirm improvement over time, including in relation to the entire disability support system and the unintended consequences of service limitations resulting in the state government funding being used in the health and other systems to meet requirements that should be met within the disability services system
- as an equal financial contributor to the NDIS, the state government must have equal decision-making powers with the Commonwealth in the overall governance of the Scheme in order to implement the significant reforms outlines in this paper and to ensure a timely response to issues being raised
- a local operational decision-making and governance system that is responsive to people’s needs and is built on the LAC experience and capacity previously established in Western Australia
- a governance system that includes the above and incorporates real and effective collaboration between all parties: people living with disability, advocates, providers and governments
- a transparent performance reporting system that effectively describes what good performance looks like across the system, what performance outcomes are being achieved and what mitigations are needed in order to improve the outcomes

These structural issues should be used to drive the identification for change of key elements in the bilateral agreement and to act as a framework for proposed responses to the issues impacting the effectiveness of the system. Overall, the better framing of the NDIS bilateral agreement will support the Western Australian government in meeting its obligations.

This framing would include provision for the development of an industry plan created via genuine collaboration between service users, advocates, service providers and the state and Commonwealth

governments utilising real time data and incorporating effective performance evaluation and assessment criteria. Such a plan would incorporate a sustainable response to challenges included below, including in relation to service type, complexity and it would prevent the tinkering around the edges of the current poorly performing system.

We now turn to specific issues required to be dealt with in the new bilateral agreement:

1) Participant Outcomes

The Problem:

Western Australia has experienced significant challenges under the NDIS that impact poorly on participants' experience. These include:

- Poor transparency in communicating processes: people do not know who to talk to, who to place reliance in and how to ensure follow-through—engaging with multiple personnel with the NDIS means a lack of understanding in relation to individual needs, history of engagement with the NDIS and repetitive processes
- Lack of consistency of information
- Lack of timeliness in funding approval processes, whether relating to services or equipment
- Lack of predictability in planning, funding and processes
- Lack of accountability of NDIS staff: “not my job”, no follow-through, no way of reverting back to the same staff reducing institutional memory of specific significantly and reducing the responsibility taken by staff; NDIS staff under-qualified and inexperienced
- No data assets to support efficiency and effectiveness
- Lack of decision-making capacity (planning, funding, governance) at the local level, timing delays in achieving outcomes and repetitive, poorly managed planning and other unnecessary iterations of processes
- Lack of flexibility in planning and participant response processes, especially in relation to high-needs individuals and people with uncommon needs, including Indigenous people and CALD cohorts
- Lack of flexibility in funding arrangements ensuring CALD, remote and other service needs are poorly and/or ineffectively resourced
- Lack of appropriate emergency accommodation, Provider of Last Resort supports and funding and proactive, preventative supports to keep people out of hospitals and at home

- Lack of local governance capacity reinforcing experience of poor responses to problems
- Lack of collaboration between participants, their advocates, providers and governments—the conflict of interest issue is not well understood, managed nor well considered in terms of the balance between potentially conflicted interests, conflation of interests and service experience and capacity. This inhibits effective collaboration and increases inefficiencies for all parties
- Lack of recognition of the role, contribution, importance of informal supports to the NDIS’ sustainability—or the challenges these people face—in achieving timely service delivery and participant outcomes
- Lack of transparency with respect to reporting these issues and tracking their resolution at the system level, NDIS level and/or the individual participant level
- Lack of proportionality in relation to planning processes and approvals.⁵ The planning process is not modified/simplified to reflect low risk needs

The Impact:

- Significant under-utilisation of plan budgets
- NDIS objective of choice and control simply not met
- Poor participant outcomes—delayed services, frustration, negative impacts on informal supports
- Negative impacts on informal supports—increased costs to NDIS, providers and reduced outcomes quality to participants
- Excess NDIS staff time and costs—increased NDIS costs and decreased system sustainability
- Excess state government staff time and costs dealing with issues that are iterative and should be systemically dealt with
- Excess provider staff time and costs—increased providers costs and decreased provider sustainability
- Increased provider costs in relation to administrative burden when funding could be allocated to service provision if it was provided in a fit-for-purpose structure in response to real need and local decision making

⁵ See Person Centred Planning within the NDIS at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3571098

- Increased state government costs in primary healthcare and other services as a result of service failure in the disability services system⁶
- One-size-fits-all funding rationing system means fit-for-purpose funding arrangements cannot be applied where necessary demonstrably reducing utilisation and causing inefficiency. For instance, there is significant evidence to show that block funding is more appropriate in some circumstances than the quasi-market funding arrangements so that flexible funding arrangements should be used to ensure efficiency and effectiveness
- Poor decision-making capability at senior government and/or provider management levels
- Poor decision predictability increasing uncertainty and administrative costs, and reducing outcomes—the net effect is to reduce services and investment in organisational capacity with under-utilisation demonstrating this reality
- Limited transparency leading to poor governance responses
- Lack of local governance capacity means that limited effective governance is deployed

The Solution—the bilateral agreement should provide for:

- As an equal resource contributor, the state government to have equal decision-making capacity with the Commonwealth in the design, reform and operation of the Scheme
- a comprehensive LAC system that builds on Western Australia’s unique and long experience of individualised funding. This system would include provision for fit-for-purpose planning and budgeting processes responsive to the particular needs of individual clients and collaborative decision-making capacity at the local level including people living with disability, providers and the NDIS. Such a system would also inform the NDIS with respect to learnings that would improve the system overall
- the establishment of the LAC as the principal liaison between the participant (and their informal supports), providers and the NDIS; the LAC would operate in a collaborative and inclusive manner with flexibility in the context of participant needs, participant capacity for self-advocacy and informal support capacity
- the recognition that specialist supports and services also require specialist providers and LACs with comprehensive skills and experience in relation to the particular needs being addressed

⁶ For instance, see the Auditor General of WA at <https://audit.wa.gov.au/reports-and-publications/reports/was-transition-to-the-ndis/>

- the decision-making power regarding the Linkages and Capacity Building (ILC) Investment Strategy should be vested in the Western Australian government
- the recognition of, and support the role of, informal supports and their needs in terms of the sustainability of their contribution including in the development of plans and identification of outcomes
- specific agreed response timeframes relating to queries raised by participants and providers, and transparent reporting frameworks to ensure mitigations are able to be implemented in a timely manner where the response timeframes are not met
- performance measures relating to participant satisfaction and ensure the results reported transparently and in a timely manner, including the publication of evaluation and review information
- specific agreed response timeframes for funding decisions, regardless of purpose and respecting that this may require upfront funding being made such that services and supports can be provided before funding is confirmed—this will require a higher level of predictability with respect to funding decisions which would be facilitated under the LAC system identified above
- a planning and approval system that is proportionate to the care, service and financial risk ensuring administrative resources are allocated toward managing service quality and governance at the highest risk levels

2) Financial Resourcing

The Problem:

- The continued reference to market concepts describing what is, essentially, a funding rationing system misinforms and misguides decision makers and policy makers while also misguiding the focus of efficiency generation
- Pricing is not related to comprehensive cost of service delivery
- Minimal data of quality is collected and analysed to inform pricing
- Providers are challenged by shortfalls in resourcing and the only capacity for change they have is in relation to service quality as service quantity cannot be changed due to the funding rationing system which also requires significant working capital (see previous section for delays which impact cash flow negatively)

- Quality is also impacted by the lack of capacity for providers to remunerate staff according to their training and experience in the context of the service staffing requirements
- The one-size-fits-all pricing and funding rationing arrangements impact the ability of funding to be applied for maximum benefit, especially at the local level in remote and regional communities where, as a result significant research over many years, community-level solutions have been identified as far more impactful than individualised solutions
- The competition for human resources in the Western Australian context is significant, reducing the capacity of providers to deliver services and, thus, impacting financial sustainability. This is borne out in various reports over the life of the NDIS and was also identified categorically in the 2021 NDIS Pricing Review for Western Australia. Additionally, we are seeing this experience across human services in Western Australia where participation rates remain high while job quality negatively impacts the ability of human services organisations (including NDIS providers) to recruit and retain staff. At the Western Australian human services sector level, this is evidenced by shrinking service mixes undertaken by human services providers, including in disability services⁷
- Cost increases over time have been exacerbated by the poor pricing decisions made by the NDIA reducing markedly the sustainability of service providers. For instance, in a recent study⁸:
 - Per client labour costs were shown to increase by 9% between 2019-20 and 15.96% in 2020-21 across a cohort of providers in WA. These cost increases occurred prior to increases in the national wage case and state wage decision in 2022 and are prior to legislated superannuation increases
 - Agency staffing costs were shown to increase by 33.82% and 39.83% in 2019/20 and 2020/21 respectively
 - The proportion of agency costs to direct labour costs rose from 3.67% to 5.57% during the period studied
 - Recruitment costs increased by 12% in 2019/20 and by 27.6% in 2020/21
 - Mandatory training and professional development costs were shown to rise by 11.77% and 27.6% in 2019/20 and 2020/21 respectively
 - NDIS-specific staffing costs were shown to rise by 20.64% and 32.8% in 2019/20 and 2020/21 respectively
 - Quality control and compliance costs were demonstrated to have risen by 20.5% since 2019

⁷ See the WA NFP Landscape Report 2020 at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720974

⁸ See The 2021 NDIS Pricing Review: Western Australia Costs Assessment – Drivers of Cost Increases at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3976086

These cost increases are substantial in the context of the pricing rationing system where prices are not related to the cost of service delivery and the prospective cost increases already foreshadowed for the 2022/23 year and forward years

- The risks observable in relation to service sustainability are not reported against in sufficient granularity to be of great value to governance or transparency and accountability. These observable risks include:
 - Under-utilisation
 - Service Provider Entries
 - Service Provider Exits
 - Staffing Vacancy Rates
 - Job Quality Comparisons⁹
 - Worker safety and clinical safety
- Provider of Last Resort arrangements are non-existent with a lack of local decision-making capacity ensuring responses to immediate and unplanned needs are haphazard and funding predictability (see previous section) impacts capacity of service providers to respond.¹⁰ This causes inconsistency in service outcomes and pushes additional costs back onto the state government as primary care hospital beds and other resources are consumed due to the fact that more efficient disability services cannot be provided
- The lack of real and effective collaboration between government, advocates and providers, combined with a lack of data assets, means that under-utilisation goes unanalysed and the use of markets rhetoric leads policy makers to mistakenly believe that sharing supply-side and demand-side data will somehow impact the delivery of services when, in fact, if combined with localised decision making capacity and fit-for-purpose funding regimes, such collaboration and knowledge sharing can positively impact current service gaps

The Impact:

- Inconsistency and uncertainty in service outcomes
- Increased cost to the state government as primary care resources are consumed as substitutes for disability services that are not available—effectively the state government pays twice, once for the NDIS and once for the services required because the NDIS is not working
- The sustainability of the service provider sector is significantly compromised with ultimate risk borne by participants and informal supports

⁹ See NDIS Green Paper 3: Proxies for Risk – A First Line of Defence at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3708022

¹⁰ See the Productivity Commission 2017 review at <https://www.pc.gov.au/inquiries/completed/ndis-costs/report/ndis-costs.pdf>

- NDIS pricing is not based on the comprehensive cost of service delivery and so priorities cannot be developed nor can governments understand the true cost to the community
- Other state government initiatives, such as workforce strategies, are compromised because the fundamental elements of job quality and service provider sustainability are not managed properly
- The political and financial risk to government is significantly increased as service collapse results in additional inefficient government funding allocations
- Providers are opting away from service delivery in the disability services sector due to negative impacts and higher risks to their organisations as demonstrated by changes in service mix
- The increase in administrative burden also impacts the ability of service providers to allocate sufficient resources to service provision, causes them to reassess their involvement in disability services provision where they operate other services and prevents the entry of service providers due to uncertainty and financial insecurity

The Solution—the bilateral agreement should provide for:

- the allocation of funding for appropriate data to build transparent, published data assets that allow the sector and government to identify:
 - Location, service types and quantity of service needs
 - Location, service types and quantity of under-utilisation
 - The comprehensive cost of service delivery at a granular level
 - Appropriate price indexation in order to ensure funding resources are sufficient to provide services
 - The costs of state government services accessed due to service failure in the disability services sector

While it is true that data collection and the analysis of results does cost time and money, the inefficiencies, risks and structural issues contributed to by the current one-size-fits-all funding regime and lack of decision-making capacity outweigh these costs in a billion-dollar program and increase transparency and efficiency significantly. This initiative would also underpin equity and right of service access concerns currently being observed in Western Australia

- the establishment of fit-for-purpose flexible funding rationing regimes that support the requirements of service delivery, including in relation to remote and regional service delivery, differing service types and which support local decision making

- Where underutilisation occurs, the funds contributed to by the state should be returned to the state in the following fiscal year and quarantined in order to be reinvested in services and supports in order to reduce service gaps
- the acceptance that the issue of job quality is profoundly impacting the sustainability of the sector and detracting from the various workforce development schemes in place; requiring funding allocations sufficient to improve job quality while retaining the financial sustainability of service providers
- a proportion of the current funding allocated to the administrative functioning of the NDIA to be reallocated to fund the LAC network, including local decision-making capacity, flexible funding arrangements, a local governance framework and Provider of Last Resort capacity within the Western Australian disability services sector
- additional funding to be allocated in order to build service provider capacity to operate within the quality assurance structure. This could be allocated via the pricing model or via a block funding allocation

Way Forward

No one argues that disability services system in Western Australia is not essential and that its efficiency and effectiveness is a critical component in ensuring financial sustainability in public spending. The experience of the NDIS and its implementation in the state has been of great importance in allowing participants, advocates, the disability service providers and governments to learn from mistakes.

Given the systemic issues, impacts and response outlined above, it is recommended that funding be set aside to facilitate the collaborative development of an industry plan which would be structured to mitigate the above issues and underpin the ongoing development of the disability services sector in Western Australia, including the NDIS.

The process of developing, implementing and performance reviewing an industry plan in a truly collaborative environment would have very significant advantages as well as work toward to removal of the challenges outlined in this document. These advantages would include:

- real improvement in service quality, financial sustainability and outcomes for participants
- increased certainty encouraging provider participation—both existing and prospective
- increased collaboration to problem solving and prioritisation
- increased efficiency

All of these advantages would allow us to work together to build on Western Australia's very strong and long history of effective disability service provision to the benefit of all in our community—a vision that everyone can get behind.

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Coalition of Disability Advocacy Organisations in Western Australia – Participating Members:

Citizen Advocacy

Consumers of Mental Health WA

Developmental Disability WA

Explorability

Kalparrin

MIDLAS

National Disability Services

People with Disabilities WA

Personal Advocacy Service WA

Sussex Street Community Law Service

Uniting

WA Individualised Services

Western Australian Association for Mental Health