

NDS Comments on the Competition Policy Review Issues Paper April 2014

NDS appreciates the opportunity to comment on the Competition Policy Review Issues Paper of April 2014. Our submission will address questions in the issues paper that relate to the provision of disability services in a competitive market.

NDS is strongly committed to the National Disability Insurance Scheme (NDIS) which aims to create a sustainable market for disability services. The NDIS market design should help support a culture of choice and control for people with disability and enhance their social and economic participation.

NDS is also committed to ensuring that the increasingly contestable market for Disability Employment Services (DES) operates as effectively as possible. We are concerned that the DES program's high levels of prescription and regulation compromise this goal.

While we anticipate that a fair application of competition principles in the disability sector will enhance effective and efficient service provision, the potential for unintended consequences should be carefully monitored. In particular, there is a risk of weakening the not-for profit sector's production of social capital (including volunteering, community building and public fundraising) and the collaborative culture that has traditionally underpinned it. If competition diminished this social capital production, it would lessen the NDIS's benefits and ultimately increase the financial cost of the Scheme. Any code of conduct regulating competition in the disability sector must be designed to protect diversity in the market, including participation by small support service providers, without preventing collaborative approaches to service development or contestability.

Regulatory Impediments to Competition

Barriers to competition – are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

While in some respects the DES program is highly competitive (subjecting providers to periodic open tenders and business re-allocation based on their Star Ratings), in other respects it is highly restrictive. DES providers are subject to a stringent compliance regime that restricts their flexibility to innovate and respond to the diversity of their job seekers and their customers (employers).

The DES program is regulated by 900 pages of contractual requirements and guidelines. Supporting this are program assurance audits, site inspections, integrity audits and mandatory quality assurance accreditation. The compliance burden has required DES providers to compile significant amounts of electronic and hard copy evidence and led to some providers creating dedicated compliance officer positions. Smaller or specialist

organisations lacking the ability to defray the cost of such compliance are immediately placed at a competitive disadvantage. Although the government is applying the principle of contestability across the DES program (through the Federal Budget decision to subject CRS Australia's Disability Management Services to tender), some organisations are indicating a reluctance to prepare a tender in what they consider to be an unfair system skewed to larger providers which have administrative capacity.

While the design of regulation in the DES system aims to use competition levers to improve quality and contain costs, the sheer quantity of regulatory prescription actually stifles innovation and as such impedes competition to improve quality outcomes. The current level of regulation and compliance in the DES program could be reduced without compromising accountability.

Are there occupational-based restrictions, or restrictions on when and how services can be provided, that have an unduly adverse impact on competition? Can the objectives of these restrictions be achieved in a manner more conducive to competition?

The NDIS represents a fundamental shift in social policy and will require a parallel transformation in the structure and nature of the workforce needed to implement it. For example, in response to consumer demand and individualised funding, work could become more fragmented, occur at any time of the day or week and occur in settings more diverse than was the case in historic centre-based disability service models. The disability sector will need a more flexible workforce with the depth and breadth of skills to facilitate and complement improved social and economic participation.

Workers in the disability support sector are generally paid at Award rates, which leaves little room for service providers to negotiate flexibility in the working arrangements. It is important that the industrial relations framework enables the development of working arrangements that respond to the diverse needs and wishes of NDIS participants, while ensuring working conditions that are attractive to an enlarged workforce. To aid this process, NDS will seek to have various issues considered in the Fair Work Commission's pending four-yearly review of the Modern Awards.

Clearer career pathways are required between the disability sector and adjacent sectors such as aged-care and health. Work is needed to ensure that scopes of practice allow various worker roles to cross sectors and for the development of assistant roles to enable optimal utilization of skilled workers, in particular for allied health professionals.

Potential reforms in other sectors

Would there be a net public benefit in encouraging greater competition and choice in sectors with substantial government participation (including education, health and disability care and support)?

The principle of consumer choice and control is a key driver of the NDIS design as envisioned in the Productivity Commission's 2011 Report 'Disability Care and Support'. The disability support market created by the NDIS individualised funding model is intended to replace the previously inflexible, program-based service system.

The net public benefits to be gained by the implementation of the NDIS are manifold and should include significant improvements in the social and economic participation of both people with disability and their carers. The increased employment of people with disability

and carers has the potential to increase GDP by billions of dollars. Increasing workforce participation is a key strategy to reduce long-term fiscal pressure arising from an ageing population. Increased employment of people with disability will also reduce the \$15.8 billion bill for disability-related income support.

These remarkable economic gains are achievable. OECD and ABS data indicate that at least a quarter of people with disability, not in the labour force, can work with support; and other OECD countries have achieved much higher employment participation of people with disability. It is also likely that a large number of carers who currently cannot work may gain employment or increase their hours of work.

The NDIS, allied with a reformed DES program, could increase employment by providing the equipment or support needed by some people to gain work and by freeing some family carers from providing 24/7 life-long support.

Additionally, greater efficiencies can be expected to arise in the operation of the taxation and welfare systems through increased employment participation and better utilisation of people's skills. Other service systems (such as health, housing, income support and justice) will find themselves under less pressure to assist people with disability as the current disability support system's shortages will have been addressed.

Can more competitive outcomes in the human services sector enhance both Australia's productivity and the quality of human services delivered to Australian citizens?

While competition in the disability sector can help drive enhanced outcomes for service users, there are limits to the benefits competition can provide. Increased competition would be counter-productive if it undermined the ability of not-for profit disability support services to cooperate and collaborate, particularly in relation to community development and the production of social capital. It would be unfortunate if a code of conduct aimed at eliminating uncompetitive practices inadvertently prevented small not-for-profit providers from effectively participating in the market, and thus significantly reduced the diversity of the sector. This concept should be recognised in relevant legislation.

Will more competition among providers serve the interests of consumers of disability services?

Competition among disability service providers is clearly expected to serve the interests of people with disability through expanding choice and the provision of tailored, efficiently-priced services. However, competition among providers of disability services may be unable to serve consumers' interests where 'thin markets' exist. These markets include rural and regional areas and the provision of certain specialist service types or models, such as those for consumers with complex and challenging behaviours. The Northern Territory NDIS trial site will ensure valuable experience is gained in regard to meeting some of these challenges.

What issues arise when government agencies, private businesses and not for profit organisations simultaneously seek to provide human services?

There is an inherent tension between government's role as a regulator and funder of disability services and its role as a direct provider of services. In most parts of Australia,

government-owned disability service providers are able to offer better wages and conditions than non-government providers by cross-subsidising their costs. This exacerbates workforce pressure on NGOs and unfairly advantages government providers.

This inequity matters less in a system where demand for disability services greatly outstrips supply and NGOs are often funded through block grants; but in the emerging NDIS market where providers will compete for customers, it is essential that a truly level playing field exists.

The commitment to implement the NDIS has led some state and territory governments to announce their intention to withdraw from direct service provision, partly or fully. As long as this intention is implemented in an orderly consultative manner, NDS supports it. Non-government services are typically less bureaucratic, more responsive to local needs and preferences, more mission-driven and more efficient than their government-owned counterparts.

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About National Disability Services

National Disability Services is the peak industry body for non-government disability services. Its purpose is to promote quality service provision and life opportunities for Australians with disability. Its Australia-wide membership includes 950 non-government organisations, which support people with all forms of disability. Its members collectively provide the full range of disability services—from accommodation support, respite and therapy to community access and employment. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Federal governments.