



Queensland Government submission
to the Queensland Productivity Commission
Inquiry into the NDIS market in Queensland
Feedback on the 30 November 2020 Draft Report

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Executive Overview

The Queensland Government welcomes the release of the draft report of the Queensland Productivity Commission's (QPC) Inquiry into the NDIS Market in Queensland (the Inquiry). The draft report is comprehensive and has been informed by extensive public consultation including 42 written submissions and individual discussions, roundtables and focus groups with more than 325 people.

An accessible, sustainable and well-functioning market is critical for achieving the expected benefits of the NDIS—most importantly to realise improved outcomes for participants with disability but also the economic benefits to be expected from a financial investment of this magnitude, including, job creation, skills development and increased workforce participation. Better evidence leads to better policy design, and more success in achieving reform (Daley, 2020). When finalised, the QPC report will provide the Queensland Government with a very solid evidence base to advocate for market policy reform at the national level, particularly through the refreshed governance arrangements of the Disability Reform Ministers' Meeting.

The purpose of this submission is to provide additional information and context for the QPC to consider when finalising its recommendations so that they are targeted, effective and achievable in the context of a rapidly evolving national reform environment.

The submission provides feedback across the following key themes:

Roles and responsibilities: The submission highlights further information that could be considered in finalising the recommendations to ensure they are appropriately targeted and reflect the joint funding model and agreed market roles and responsibilities under the NDIS.

Governance mechanisms and processes: The submission also suggests that QPC consider some recommendations from the perspective of recently refreshed governance arrangements under the NDIS and established processes which govern scheme operation.

Flexibility in implementation approach: The submission highlights that a number of draft recommendations are attached to national work that is already substantially progressed or which may not be the correct vehicle for further action. Further contextual information is provided to assist in finalisation of the recommendations to ensure they can endure in an evolving policy environment.

Impacts on safeguards and people with disability: The submission highlights the importance of ensuring that market stimulation does not reduce safeguards for people with disability or unreasonably increase expectations on participants.

Issues where further analysis or guidance would assist: The recommendations of the QPC will provide a strong evidence base for the Queensland Government to advocate for change at a national level. The submission identifies areas where additional findings or further analysis would assist. For example:

- additional advice on governance and regulation of digital marketplaces (draft recommendation 9)
- information to support the suggested 2022-23 timeframe for commencing the rollback of pricing caps (draft recommendation 19)
- further analysis on how support coordination impacts participant plan utilisation (draft recommendations 29 and 31).

The submission also identifies some specific draft recommendations where more substantive issues have been identified regarding the approach or content of the draft recommendations. Examples are recommendations in relation to pricing deregulation; restrictive practices; transport; and proposed changes to the NDIS Act and processes for the review of regulatory mechanisms.

The Queensland Government looks forward to receiving the final report of the QPC to guide further national negotiations and reforms to ensure that Queenslanders with disability are able to maximise access to supports under the NDIS.

Introduction

This submission to the Inquiry provides additional context and information to assist the QPC in finalising a set of recommendations for the Queensland Government that are targeted and effective in improving the effectiveness and efficiency of the NDIS market in Queensland.

The recommendations also need to stand the test of time, in a policy environment that continues to mature and evolve.

To inform this submission, Queensland Government agencies have considered whether the draft recommendations:

- respond to the issues identified in the findings and in the previous Queensland Government submission
- would be effective and maintain appropriate quality and safeguards
- reflect roles and responsibilities under the NDIS
- have any associated implementation issues
- reflect work underway in relation to the issues raised.

The submission does not address all thirty-nine recommendations in the draft report, focusing on those where it is considered that further information may assist the QPC to finalise their report.

This submission has been prepared in consultation with the following agencies:

- Department of Children, Youth Justice and Multicultural Affairs (DCYJMA)
- Department of Communities, Housing and Digital Economy (DCHDE)
- Department of Education (DoE)
- Department of Employment, Small Business and Training (DESBT)
- Queensland Health (QH)
- Department of Justice and Attorney-General (DJAG)
- Department of the Premier and Cabinet (DPC)
- Department of Seniors and Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP)
- Department of Transport and Main Roads (TMR)
- Queensland Corrective Services (QCS)
- Queensland Treasury (QT)

This submission does not provide a Queensland Government position on the draft recommendations. Consideration of the final recommendations will occur following the finalisation of QPC's final report in April 2021.

1. Improving Participant Outcomes

1.1 Improving access to the NDIS

Draft QPC Recommendation

Draft Recommendation 1

To improve the access of eligible people with a disability to the NDIS, the Queensland Government should:

- propose that the Disability Reform Ministers' Meeting oversight the development of the proposed national outreach strategy, including the preparation of a publicly available implementation plan and periodic public reporting on progress
- contribute to the development of the proposed national outreach strategy by:
 - evaluating the effectiveness of existing programs, and any overlaps or gaps between them
 - reviewing information about the population of potential participants in the scheme in Queensland
 - identifying barriers to potential participants from accessing the scheme and about how to address them
 - assessing which programs should be retained and refined
 - considering the roles of the Queensland Government and the NDIA in delivering outreach programs
- propose the monitoring and evaluation of independent assessments, conducted independently of both the NDIA and the organisations selected to implement them
- suggest that the review of national advocacy and decision-making supports consider how the access process could be simplified, to enable and encourage more people with a disability to complete it without the need for these supports.

Comments

National outreach strategy

It is noted that the QPC draft report recommends that Queensland propose that:

- the Disability Reform Ministers' Meeting oversight the development of the proposed national outreach strategy
- the review of national advocacy and decision-making supports consider how the access process could be simplified, to enable and encourage more people with a disability to complete it without the need for these supports.

Further information for consideration

The Queensland Government through Disability Reform Ministers' Meeting (DRMM) will work with the Commonwealth, NDIA and other states and territories to oversee the implementation of the recommendations of the Review of the *National Disability Insurance Scheme Act 2013: Removing Red Tape and Implementing the NDIS Participant Service Guarantee* by Mr David Tune AO PSM (the Tune Review). Identification of options to roll out a national outreach strategy has already been agreed through the Commonwealth Government's acceptance of the recommendations of the Tune Review report.

In addition, the Tune Review made a series of recommendations which are designed to improve access to the NDIS, including:

- Recommendation 3: to improve supports to navigate the NDIS
- Recommendation 5: to enable people with disability to track the status of NDIA processes which relate to them

- Recommendation 8: to provide greater clarity about permanency of disability for people with psychosocial disability
- Recommendation 9: increasing the time participants have to provide additional material requested by the NDIA in relation to an access decision.

The NDIA has commenced a significant raft of reforms designed to improve access to the NDIS by streamlining the access process and implementing access pathways for people with complex needs and people who have psychosocial disability.

While this reform process will complement the review of national advocacy and decision-making supports, improving the access process is a separate piece of reform work.

Feedback from advocacy organisations and Queensland's Office of the Public Guardian and Queensland Civil and Administrative Tribunal suggests that demand for support with NDIS access processes has increased. While simplifying access processes and working to build the capacity of people with disability may help reduce demand for assistance with NDIS access, some people with disability will continue to require advocacy supports in the access process.

The review of national advocacy and decision-making supports is well-advanced. It may be more effective for the Queensland Government to advocate for simplification of NDIS access process as part of other reform work already underway on this issue.

In addition, there is a range of work already occurring to improve outreach and access. For example, the NDIA has committed \$20 million to expand the National Community Connectors Program to provide support to access the NDIS to four specific groups including: people including Aboriginal and Torres Strait Islander communities; culturally and linguistically diverse communities; people experiencing psychosocial disabilities; and ageing parents or carers of people with disability.

Roles and Responsibilities under the NDIS

It is noted that the QPC draft report recommends that Queensland contribute to the development of the proposed national outreach strategy by: evaluating the effectiveness of existing programs, and any overlaps or gaps between them; reviewing information about the population of potential participants in the scheme in Queensland; identifying barriers to potential participants from accessing the scheme and about how to address them; assessing which programs should be retained and refined; and considering the roles of the Queensland Government and the NDIA in delivering outreach programs

Further information for consideration

While the Queensland Government works actively with the Commonwealth Government through DRMM and associated governance structures to identify opportunities to increase access to the scheme, this is primarily a Commonwealth Government responsibility, as is evaluating the effectiveness of programs and identifying barriers and how to address them.

These roles and responsibilities are reflected in the \$20 million investment by the Commonwealth Government to enable the Queensland Government to establish Assessment and Referral Teams (ART) to further support NDIS participation by hard to reach cohorts. This project also reflects the willingness and active effort of the Queensland Government to support the Commonwealth Government to improve access to the NDIS. ART will be evaluated when it concludes in June 2022. This information may assist the development of a national outreach strategy.

Monitoring and evaluating the use of independent assessments

It is noted that the QPC draft report recommends that Queensland propose the monitoring and evaluation of independent assessments, conducted independently of both the NDIA and the organisations selected to implement them.

Further information for consideration

The announcement that independent functional assessments will become a mandatory part of the NDIS access and planning process represents a significant change to how information to support decisions about access and reasonable and necessary supports is generated in the NDIS. It will require an individual to undertake an assessment with a professional from a panel of independent assessors, using specified standardised assessment tools. This differs markedly from the current process, in which the person obtains information to support their access request from their own treating health professionals, or professionals of their choice, at their own expense.

The Queensland Government is aware of significant concerns held by people with disability and disability stakeholders that the design and implementation of the assessment process may not be consistent with the NDIA's stated objectives of making access simpler and fairer.

The NDIA is holding a consultation process from November 2020 to February 2021, and the Joint Standing Committee (JSC) on the NDIS is conducting an inquiry into independent assessments, closing 31 March 2021.

The Queensland Government is engaged in ongoing discussions with the Commonwealth and with disability sector stakeholders to advocate for concerns relating to the use of mandatory independent assessments to be addressed.

Improving access to the NDIS

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The development of a national outreach strategy has already been agreed through the Commonwealth Government's acceptance of the recommendations of the Tune Review report.
- The respective roles and responsibilities of the Commonwealth and Queensland Governments in relation to NDIS access issues
- Allowing flexibility for the Queensland Government to utilise the most effective mechanisms, aligned with governance arrangements, over the longer term to seek improvements to the access process (including advocating for ongoing evaluation of independent assessments), such as through the implementation of the Tune Review.
- The Queensland Government can use existing bilateral governance mechanisms such as the Executive Steering Committee (which include representation from the NDIA and Commonwealth) to raise issues about access matters specific to Queensland.
- As the review of national advocacy and decision-making supports is well-advanced, it may be more appropriate and effective for the Queensland Government to raise simplifying NDIS access as part of other reforms such as work to implement the recommendations of the Tune Review.

1.2 Improving the planning process

Draft QPC Recommendation

Draft Recommendation 2

To improve NDIS plan creation, the Queensland Government should:

- propose that the Disability Reform Ministers' Meeting develop a statement on the definition of 'reasonable and necessary supports' and the meaning of 'choice and control'
- complete preparatory work to enable it to make an effective contribution to the development of the statement
- contribute to the NDIA's review of draft plans
- propose that the NDIA:
 - review options for enabling and encouraging participants to access information about the planning process before the planning meeting
 - develop, implement and report on a strategy to remove barriers to self-managed plans, when it is within the capacity of the participant.

Comments

Defining reasonable and necessary supports

It is noted that the QPC draft report recommends that to improve NDIS plan creation, the Queensland Government should propose that DRMM develop a statement on the definition of 'reasonable and necessary supports' and the meaning of 'choice and control'.

Further information for consideration

The Tune review recommended (Recommendation 4) all governments and the NDIA provide more clarity around the definition of 'reasonable and necessary' and outlined a number of areas for action, including: the NDIS publishing accessible information about how it determines when a support is reasonable and necessary; updating the NDIS Rules to reflect Disability Ministers' agreements on boundaries between mainstream systems; Disability Ministers working to resolve the interface between the NDIS and ordinary living costs; amending the NDIS Act to clarify that reasonable and necessary supports are considered together as a package; and amending the NDIS Act to clarify that the NDIS is not responsible for funding supports in the absence of that support being provided through another more appropriate service system.

The Commonwealth Government has accepted recommendation 4 of the Tune Review by supporting amendments to the NDIS Act and Rules to clarify the application of reasonable and necessary in the context of an individual participant's plan. The QPC may wish to consider if there is an opportunity for the Queensland Government to advocate for greater alignment with the broader intent of recommendation 4 of the Tune Review.

Mechanism to define reasonable and necessary supports

The matters the NDIA must consider in determining reasonable and necessary supports are identified in the NDIS Act, section 34, and detailed in the NDIS (Supports for Participants) Rules. The Supports for Participants Rule is a Category A rule under Section 209 of the NDIS Act. There are established processes for the making of Category A Rules under the NDIS Act that have legal effect. As stated in the Explanatory notes to the NDIS Act, Category A Rules are those relating to significant policy matters for the Commonwealth and state and territory governments. The making or amendment of Category A Rules requires the agreement of all jurisdictions. The Queensland Government considers that the making of a Category A Rule through established processes is likely to be a more effective mechanism to create further clarity rather than a statement by DRMM.

Outlining the meaning of choice and control

The draft QPC report presents an analysis that demonstrates how ambiguity surrounding the scope of decisions over which participants have choice and control has resulted in appeals to the Administrative Appeals Tribunal. The QPC has also found that it is difficult to define how participant choice interacts with the interpretation of reasonable and necessary.

Areas of potential further analysis and advice

From a policy perspective, in developing a statement on the meaning of choice and control, there must be a balance between providing greater clarity for all stakeholders and ensuring that there are not unintended consequences for participants, for example if it is applied inflexibly or operationalised in a way that narrows participant choice and control, when choice and control is a key tenet of the NDIS.

Improving planning

Participants having access to information in the planning process

The QPC recommends that the Queensland Government propose the NDIA review options for enabling and encouraging participants to access information about the planning process before the planning meeting.

Further information for consideration

The NDIA has released a Participant Service Improvement Plan 2020-21. The NDIA states, “this Plan is the key to making real the promises made in the Participant Service Charter and Participant Service Guarantee”. (NDIA, 2020d, p.2)

The Queensland Government notes the NDIS Participant Service Improvement Plan contains a commitment that participants will receive plan summary statements and draft plans before a plan is finally approved. The NDIA website states this commitment is expected to be completed by June 2021. The NDIA consultation paper on Planning Policy for Personalised Budgets also notes participants will receive a draft plan and personal budget in advance of their planning meeting (NDIA, 2020c, p.9).

In finalising draft Recommendation 2 related to draft plans, the QPC may like to consider opportunities for the Queensland Government to monitor and contribute to improvements to the planning process, including the provision of draft plans, through implementation of reforms such as the Participant Service Guarantee.

Review of draft plans

In addition, draft Recommendation 2 proposes that the Queensland Government contributes to the NDIA’s review of draft plans.

Further information for consideration

The NDIA has operational responsibility for implementation of the scheme whereas DRMM (including the Queensland Minister) has an oversight role in relation to the scheme.

It may be more consistent with roles and responsibilities under the scheme for the Queensland Government, through DRMM, to monitor the outcomes of the review of draft plans rather than contribute to a review of draft plans.

This approach could enable the Queensland Government to advocate for information and data to be provided to DRMM (disaggregated to a jurisdictional level) to enable oversight of the review of draft plans. Data which could be helpful includes: the proportion of participants whose plans increase or decrease at plan review, the amount by which plans change at review, reasons for the change (such as change in the participant’s capacity, informal supports, or living arrangement), what supports were

removed or added (such as Support Coordination), and participant characteristics including regional location.

Choosing the type of plan management

The draft report of the QPC recommends that the Queensland Government propose the NDIA develop, implement and report on a strategy to remove barriers to self-managed plans, when it is within the capacity of the participant.

Further, the draft report indicates that, given self-management offers greater choice and control, participants should be 'nudged' towards self-managed plans by making self-management the default option from the participant's second plan unless contra-indicated by a risk assessment process. (QPC draft report, p.108)

Further information for consideration

While the Queensland Government supports initiatives to build the capacity of participants to act as informed consumers, including exploring self-management, the views of stakeholders quoted in the report are noted that some people will continue to require support to manage their plan throughout their life, due to the impact of their disability.

Participants with complex needs may access supports from multiple service providers, using a number of different service types. For these participants and/or their families or nominees, the administrative and financial obligations of self-management may prove a disincentive to choosing self-management, regardless of whether they have the capacity to do so. The choice of how to manage their plan should always be a free choice for the participant based on their assessment of their personal circumstances.

Using a plan

Draft QPC Recommendation

Draft Recommendation 3

To improve plan utilisation, the Queensland Government should propose that:

- the NDIA's selection, role description and training for planners and LACs include a 'coaching' role to enable participants to develop their capabilities to increase their independence
- the NDIA's progress in introducing additional flexibility in plan budgets be monitored and evaluated, to ensure that progress is consistent with the desired improvement in performance outcomes
- the NDIA's current consultation process on support coordination be used to clarify the role of support coordination and of the various types of providers engaged in similar roles, to avoid unnecessary overlaps and gaps in services
- the NDIA facilitate reallocating participants' plan budgets towards support coordination when it improves plan utilisation and participant outcomes.

Comments

Role of planners and LACs

The QPC report proposes that to improve plan utilisation, the Queensland Government should propose that the NDIA's selection, role description and training for planners and LACs include a 'coaching' role to enable participants to develop their capabilities to increase their independence.

Further information for consideration

If this were to be implemented, it would be important to avoid potential confusion by clarifying how the coaching element of the role of planners and NDIA Community Partners intersected with the role of other NDIS providers who may also have a capacity building role.

In addition, it may be necessary to consider the importance of maintaining the independence of capacity building supports from NDIA functions to reduce any potential conflict of interest that may arise from the same individual 'coaching' the person and making funding decisions.

Factors impacting on plan utilisation

The QPC report notes participant capacity to utilise supports in plans improves the longer the participant has a plan. While this is a relevant factor, the Queensland Government would welcome detailed advice on other factors identified by the QPC that can contribute to improved plan utilisation.

Areas of potential further analysis

In particular, the Queensland Government would welcome advice from the QPC on options to address differences in utilisation rates across cohorts. For example, the QPC report shows utilisation rates are lower among Aboriginal and Torres Strait Islander participants and those in rural and remote areas (QPC Draft Report page 477). QPC could consider whether greater effort in ensuring culturally appropriate training for LACs and a focus on employment of more Aboriginal people and Torres Strait Islander people as LACs could be part of a strategy to increase utilisation, as well as increasing and improving employment/training outcomes for Aboriginal and Torres Strait Islander peoples.

Support coordination

The QPC report proposes that to improve plan utilisation, the Queensland Government should propose that the NDIA facilitate reallocating participants' plan budgets towards support coordination when it improves plan utilisation and participant outcomes.

Further information for consideration

The NDIA Consultation paper: Planning Policy for Personalised Budgets and Plan Flexibility notes the NDIA intends to introduce changes to enable participants to have greater flexibility in using their funding (NDIS Consultation paper: Planning Policy for Personalised Budgets and Plan Flexibility page 6), including introducing personal budgets which give participants maximum flexibility in the use of their funding. Funding will be specified for particular purposes in very few circumstances, such as where funding is intended to purchase capital items or Specialist Disability Accommodation (NDIS Consultation Paper: Planning Policy for Personalised Budgets and Plan Flexibility page 12).

It may be beneficial for QPC to consider how this greater flexibility may impact on the QPC's recommendation that Queensland Government propose the NDIA reallocate plan budgets to Support Coordination where it can increase plan utilisation, as it is unclear whether plans will continue to specify amounts for Support Coordination.

Summary of suggested considerations

QPC may wish to consider the following issues further:

- If there is an opportunity for the Queensland Government to advocate for greater alignment with the broader intent of recommendation 4 of the Tune Review.
- If the making of a Category A Rule (through existing established processes) is likely to be a more effective mechanism to create further clarity in relation to 'reasonable and necessary' than a statement by DRMM.
- If there could be unintended consequences in the implementation of a statement on the meaning of 'choice and control', and how these could be managed across different contexts such as developing or thin markets.
- The impact of the commitments made by the NDIA as part of the Participant Service Charter and Participant Service Guarantee, including to provide participants with a draft plan prior to their planning session.
- If there are potentially unintended consequences of making self-management the default option for participants in their second plan and the paramount importance of the focus remaining on participants being able to exercise choice and control in how they manage their NDIS plan funding
- The importance of maintaining clarity of role function and avoiding any potential conflict of interest that may arise from any change of role for planner and LACS .
- If there are specify options or actions that could address differences in utilisation rates across cohorts.
- The potential impact of the NDIA's proposed change to the way plans are developed, in which very few supports will be fixed on the recommendation regarding reallocating plan funding to Support Coordination as a strategy to address underutilisation.

2. Improving market coordination and supply

2.1 Market information and coordination

Draft QPC Recommendation

Draft Recommendation 6

In order to improve the information available to the market to assist participants and providers in planning, the Queensland Government should propose that the NDIA:

- work with stakeholders to determine and address ongoing data gaps
- further increase the availability of basic data in the form of spreadsheets or similar. The NDIA should also make publicly available detailed unit record level data that has been confidentialised so that participants cannot be identified
- review its website and materials to better direct readers to related documents, websites, data, learning materials and research and evaluation materials held by other institutions within and outside the NDIS.

Comments

Roles and responsibilities

The QPC has included numerous recommendations (including recommendation 6) to improve the effectiveness of the NDIA's market stewardship role.

Further information for consideration

In some cases, the QPC may wish to consider these recommendations in the context of NDIS market roles and responsibilities and whether it is appropriate for the Queensland Government to make proposals relating to national issues, directly to the NDIA. Some issues may be better escalated to the Commonwealth Government, through DRMM.

In addition, the Queensland Government meets regularly with the NDIA through bilateral governance arrangements which provide opportunities for Queensland to raise operational issues and local market development with the NDIA directly, where appropriate.

Addressing data gaps

The draft report of the QPC recommends that the Queensland Government should propose that the NDIA work with stakeholders to determine and address ongoing data gaps in order to improve the information available to the market to assist participants and providers in planning.

Further information for consideration

Provision of market information is a key component of the NDIA's market stewardship role. This information can help the market to respond to demand by participants. The Queensland Government has long advocated for increasing the availability of data throughout transition, as providers and market participants have consistently argued that lack of supply and demand data is a constraint on investment and expansion.

Currently the NDIA provides minimal information in Local Government Area (LGA) level market profiles where participation rates are below 11 participants (approximately 25 LGAs). However, these regions are ones where more publicly available information is needed so that providers can understand potential opportunities for development. It would be ideal for agreement to be reached about a demand/supply profile for regions with low participation, which protects privacy but highlights areas where there are opportunities for market development (for example through demand pooling or roll-up into broader regional areas).

It is also imperative that any ongoing provision of data should be disaggregated by cohort, including by Aboriginal and Torres Strait Islander status.

Increasing data availability

The draft report of the QPC recommends that the Queensland Government should propose the NDIA should also make publicly available detailed unit record level data that has been confidentialised so that participants cannot be identified

Further information for consideration

The Queensland Government is currently working with the NDIA on ways to streamline data sharing so that relevant data can be exchanged, with privacy and security risks appropriately managed, between the NDIA and Queensland to support the delivery of the NDIS in Queensland.

In relation to the release of de-identified 'detailed unit record level data', the QPC may wish to review the NDIA's Public Data Sharing Policy (NDIA, 2020) which provides guidance on the NDIA's risk assessment framework for the public release of data, both open data and tailored data releases. Currently, microdata can be made available by request for approved researchers and academics. Analysis of such microdata is more likely to require technical proficiency, making it less suitable for open release. The NDIA will require a strong rationale for the public release of microdata, so any request by Queensland Government to the NDIA will need to consider this policy framework.

On 6 September 2019, the Australian Data and Digital Council (ADDC) agreed to establish a National Disability Data Asset (NDDA) which will bring together de-identified Commonwealth welfare and services data, NDIS data and relevant service system data from states and territories. The NDDA is currently in the pilot phases, with longer term funding arrangements yet to be confirmed. Over the longer term, the NDDA may be the appropriate mechanism to increase access to confidentialised microdata with the added benefit of this data being linked to other human services datasets.

Areas of potential further analysis and advice

In addition, there may be benefit in ensuring that providers, investors and other relevant stakeholders understand how to engage with the NDIA to make requests for more open data, and the evidence needed by the NDIA to demonstrate a gap in data provision.

Market information and coordination

Summary of suggested considerations

QPC may wish to consider the following issues further:

- Whether the recommendations in relation to market stewardship reflect market roles and responsibilities under the NDIS and the appropriate mechanism for escalation of issues.
- If it would be beneficial to explore opportunities to access a demand/supply profile for regions and cohorts with low participation and plan utilisation, in a way which protects privacy but highlights areas where there are opportunities for market development and innovative ways to address supply gaps.
- How the public release of microdata could be achieved consistent with NDIA's Public Data Sharing Policy.
- The future role of the National Disability Data Asset in providing data for disability-related research.
- If there is benefit in ensuring that providers, investors and other relevant stakeholders understand how to engage with the NDIA to make requests for more open data.

2.2 Support coordination and intermediary roles

Market benefits of support coordination

Draft QPC Recommendations

Draft Recommendation 7

The Queensland Government should propose that the NDIA take into account the market development benefits of support coordination when considering the level of funding provided to support coordination.

Comments

The QPC report notes the current approach to funding support coordination, based on the “reasonable and necessary” supports test in the NDIS Act, does not take the market development benefits of support coordination into account.

Further information for consideration

Support coordination is intended to assist participants to become aware of and understand the range of service options available to them to assist in achieving their goals and utilising their plans. The QPC proposes increased use of support coordination could assist to build the capacity of participants and therefore reduce risks associated with pricing deregulation, such as monopoly pricing.

However, it is unclear under existing legislation (supports allocated in accordance with the reasonable and necessary criteria (NDIS Act 2013 clause 34)) whether the NDIA could increase allocation of support coordination as a result of ‘taking into account’ indirect market benefits of support coordination.

It may be preferable to focus on the direct benefits of the enhanced individual capacity resulting from supports coordination which supports individuals to participate in market interactions. This approach is arguably more consistent with the allocation of ‘reasonable and necessary’ supports in participants’ plans.

The role of regulation in defining intermediary roles

Draft QPC Recommendations

Draft Recommendation 8

The Queensland Government should propose that the NDIA review its regulatory arrangements, to identify and remove restrictions (including regulation of pricing) on the ability of intermediary roles to evolve according to the market-driven needs of participants and providers, with appropriate safeguards.

If technology and participant preferences evolve the plan manager and support coordinator roles, then the NDIA may need to strengthen disclosure arrangements to address risks from the integration of advisory roles with providers who deliver supports.

Comments

The draft QPC report notes that there was intended to be a demarcation of functions between planners, support coordinators, advocates and LACS (intermediary roles) but that this is breaking down to meet the needs of participants. The QPC notes that the way supports under the NDIS are defined and priced impact on the ability of these roles to develop to offer more than one service. Accordingly, QPC recommends that regulatory restrictions should be removed to enable these roles to develop as required to meet participant needs.

Further information for consideration

The Queensland Government considers there is a need for clarity of intermediary roles given the differing skill sets required by Local Area Coordinators, Plan Managers, and Support Coordinators. Participants need to have clear information about what they can expect from each role. The categorisation of Support Coordination into three different levels reflects the increasing level of complexity the role is intended to respond to. While there may be benefits in one person undertaking plan management and support coordination functions, risks for participants may also arise. Risks may include conflict of interest, whereby providers could use intermediary roles to influence participants to purchase supports such as SIL and accommodation from the same provider.

As noted in the QPC draft report, the NDIA is conducting a review of Support Coordination which includes consideration of conflict of interest (QPC draft report page 111). In addition, the QPC has noted the Joint Standing Committee on the NDIS's report of their inquiry into SIL observed conflicts of interest, particularly where participants had both SIL and SDA in their plans, and recommended the separation of service delivery, tenancy management and support coordination for participants in SIL settings (Recommendation 24, page 90). Where the majority of supports are being purchased from one provider, participants may experience greater difficulty in exercising their right to switch providers.

Support coordination and intermediary roles

Summary of suggested considerations

QPC may wish to consider the following issues further:

- If it is preferable for NDIA to consider the direct benefits of support coordination such as enhanced individual capacity to participate in the market (which has flow on impacts for market development), which would be more consistent with 'reasonable and necessary' supports.
- Any identified risks of less delineated and regulated intermediary roles.

2.3 The role of support coordination in addressing thin markets

Draft QPC Recommendations

Draft Recommendation 29

The Queensland Government should propose that the NDIA's proposed Review of Support Coordination consider:

- the market for support coordination in rural and remote locations, including the availability and quality of support providers and whether there are areas of unmet demand
- whether the increased inclusion of support coordination in the plans of rural and remote participants would be an effective and efficient means of improving plan utilisation and building capacity in rural and remote locations.

Draft Recommendation 31

The Queensland Government should propose that the NDIA's proposed Review of Support Coordination consider:

- the market for support coordination in Aboriginal and Torres Strait Islander communities, including the availability and quality of support providers and whether there are areas of unmet demand
- whether increased inclusion of support coordination in the plans of Aboriginal and Torres Strait Islander participants would be an effective and efficient means of improving plan utilisation and building capacity

Comments

Flexibility in implementation

The draft QPC report has recommended that the Queensland Government advocate for certain matters to be considered through the NDIA's proposed Review of Support Coordination.

Further information for consideration

The NDIA announced a review of Support Coordination on 11 August 2020. Submissions closed on 13 September 2020. Given the review of support coordination is already fairly well progressed, there may be benefit in considering ongoing opportunities to better understand the role of support coordination in the NDIS and to advocate for its increased usage and/or role clarity as necessary.

Findings in relation to support coordination

The draft QPC report does not make any specific findings in relation to support coordination.

Areas of potential further analysis and advice

The Queensland Government would welcome a Finding by the QPC dedicated to support coordination based on information gained by the QPC through consultation, research and the QPC's analysis on utilisation and other variables (Appendix E). This would provide evidence for the Queensland Government to advocate for reforms in relation to support coordination, with a particular focus on thin markets, and any correlation with plan utilisation.

QPC notes that participants are less likely to have low plan utilisation if they have used support coordination in their plan than if they do not (page 472). It would be useful to understand whether support coordination 'causes' higher utilisation, or whether the correlation exists because participants with support coordination tend to be higher needs participants more likely to use the supports available to them.

The role of support coordination in addressing thin markets

Summary of suggested considerations

QPC may like to consider the following issues further:

- There may be an opportunity to focus on advocating for change to support coordination processes on a longer-term basis as opposed to the current review of support coordination.
- If more detailed findings can be made based on QPC's extensive analysis in relation to support coordination, in particular to understand why support coordination in plans is positively associated with higher levels of plan utilisation (as noted in Appendix E of the Draft Report).

2.4 Digital marketplaces

Draft QPC Recommendations

Draft Recommendation 9

The Queensland Government should propose that the NDIA develop an Application Programming Interface (API) that allows participants to share their NDIS information and receive provider proposals in a safe way, to facilitate digital marketplaces.

NDIA and NDIS Quality and Safeguards Commission (QSC) policies should support the development of digital marketplaces such that digital intermediaries are able to use both provider and participant information. This will:

- assist providers in identifying new market opportunities, such as opportunities to coordinate demand in markets where there are relatively few participants (through demand pooling), and achieve economies of scale
- allow participants to 'post' required supports for tender
- provide direct information for market stewardship on thin markets (where tenders are unmet)
- facilitate price monitoring.

Where the NDIA and QSC hold information on the quality of supports provided, that information should also be made available to enhance the value of digital marketplaces.

Comments

The QPC indicate in their draft report that digital marketplaces for NDIS supports could simplify the process of sourcing a suitable provider for an individual participant as well as help to identify opportunities for demand pooling, facilitating price monitoring and identifying supply gaps.

The Queensland Government submission to the Inquiry noted that participants can face difficulties in understanding where or how to find and select support providers and the recommendations of the QPC in relation to this issue will assist in considering opportunities into the future.

The draft report of the QPC recommends that the Queensland Government propose that the NDIA develop an Application Programming Interface (API) that allows participants to share their NDIS information and receive provider proposals in a safe way, to facilitate digital marketplaces.

Further information for consideration

The NDIA's Digital Partnership Program Consultation Paper Responses Summary and Findings (NDIA, 2020b) suggests that the NDIA have commenced work on the development of a Digital Partnership Program (DPP), including the release of an API for the NDIS.

The Queensland Government is engaging with counterparts in other jurisdictions through the cross-jurisdictional Digital Inclusion Working Group (established under the former Australian Data and Digital Council), which aims to develop a national approach for improving connectivity, affordability, digital skills capability and design of government services for digitally disadvantaged groups. Lessons from this process may be relevant for the Digital Partnerships Program.

Digital literacy and access

Further information for consideration

Consultation by the NDIA on the DPP showed that participants’ representatives and carers generally support a DPP but raised concerns about potential digital exclusion related to disability.

This is similar to the draft QPC report that notes that stakeholders provide feedback that the scheme currently assumes participants and their carers have the requisite skill to “behave as an informed customer once their plan is approved”, and that this can create disadvantage for those who do not possess such skills (p. 82).

It is therefore important to ensure that any digital platform developed is accessible and empowering for participants and that participants are supported to be able to increase their digital literacy to be able to utilise such platforms.

In addition, it will be important that alternative methods for communication and sharing information with the NDIA and providers are maintained for individuals in different settings as not all individuals are computer literate or have access to technology or the internet. For example, an Application Programming Interface (API) may not be as effective for increasing access to supports for individuals with a disability in custody due to restrictions on prisoners accessing the internet.

Consumer protections

Areas of potential further analysis and advice

The NDIA’s Digital Partnership Program Consultation Paper Responses Summary and Findings (NDIA, 2020b) outlines findings from the consultation including the importance of governance arrangements, oversight, privacy controls and quality and safeguarding in the development of a DPP.

Many stakeholders consulted by the NDIA raised concerns regarding the importance of comprehensive consumer protections. There is a risk that digital innovation can occur very rapidly and outpace government regulation.

Given the NDIA’s Digital Partnership is progressing, it would be beneficial to understand the potential governance and regulatory arrangements that would best create the necessary safeguards for participants, including best practice benchmarks from other industries and their application to the NDIS context.

Digital marketplaces

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The current work being undertaken by the NDIA to produce an API.
- The need for participants to be supported to build their digital literacy and access to online platforms.
- Further guidance on the best governance and regulatory arrangements to support the development of digital platforms would be welcomed by the Queensland Government.

2.5 The regulation of quality

Longer contract lengths

Draft QPC Recommendations

Draft Recommendation 10

The Queensland Government should propose that the NDIA allow in markets where there are significant and persistent shortfalls in supply:

- extended service agreements to be offered by participants as an incentive to providers to enter the market and/or expand supply
- longer duration participant plans to support the use of extended service agreements.

Comments

The draft QPC report recommends that in markets that are expected to have persistent shortfalls in supply, participants should be able to singularly or jointly offer to potential providers 36-month service agreements, with plan length and funding to support the extended agreements.

Further information for consideration

The NDIA has proposed to enable plans of up to five years in duration to be developed with plans to be updated when there is a significant change in a person's life, their functional capacity, or support needs (NDIS Consultation Paper: Planning Policy for Personalised Budgets and Plan Flexibility page 12-14).

It should be noted that longer duration participant plans may not be appropriate for children and young people, as their needs may change rapidly as they grow and develop.

Areas of potential further analysis and advice

As noted by the QPC, enabling greater flexibility for participants to offer extended service agreements is a participant led mechanism of addressing thin market issues. However, there is also a risk of participant choice and control being limited if their service needs change or there are there are quality and safeguarding issues that arise with the provision of the service.

It would be beneficial for the QPC to provide advice on any additional consumer protection mechanisms that should be considered in the context of extended service agreements.

Improving data to assess the risk of harm

Draft QPC Recommendations

Draft Recommendation 11

To inform participants, providers and other stakeholders on the nature of harm arising in the NDIS market, the Queensland Government should propose that the NDIS Quality and Safeguards Commission report regularly on the incidence and context of participant harm.

Comments

The QPC draft report notes that it is difficult to assess the nature (or seriousness) of harm from existing NDIS Quality and Safeguards Commission activity reports (Draft Report page 185). For example, 4,469 complaints were received, of which 48 per cent related to provider practice, 19 per cent related to worker conduct or capability and 13 per cent related to alleged abuse and neglect. The data is broken down by state, and the source of the complaint (30 per cent made by person with disability, 31 per cent by family member or friend of person with disability, 18 per cent by support workers or providers, and 17 per cent by others including guardians).

Further information for consideration

On 24 July 2020, Disability Ministers discussed critical work to strengthen the support and protections for people with disability who may be at risk of harm and agreed to further work by all Australian governments to strengthen outreach and oversight under the NDIS and other relevant systems, and state and territory guardianship arrangements (DRC Communique 24 July 2020).

Improved reporting on the incidence and context of harm to NDIS participants, as recommended by the QPC, would improve understanding and awareness of risk factors and prevalence and assist with risk management and mitigation strategies to strengthen safeguards.

In addition, greater disaggregation of the data (for example, by type of issue in provider practice or worker conduct and by cohort group) would aid the Commission and DRMM to identify more systemic issues requiring a policy response.

Regulatory alignment across sectors

Draft QPC Recommendations

Draft Recommendation 12

The Queensland Government should propose that the NDIS Quality and Safeguards Commission work closely with stakeholders such as the Aged Care Quality and Safety Commission and the Australian Commission on Safety and Quality in Health Care to streamline quality standards and introduce mutual recognition of professional qualifications across relevant sectors.

Comments

The draft QPC report recommends the streamlining of quality standards and mutual recognition of professional qualifications across relevant sectors.

Further information for consideration

The 2020-21 Commonwealth Budget included *the Australia's Care and Support Workforce Package* (\$19.8 million over three years from 2020-21). The Package is intended to boost jobs and encourage innovation, better service delivery and a more sustainable workforce by:

- Assisting providers across the care and support sector through the provision of market demand and supply information.
- Facilitating cooperation across the care and support sector by broadening the scope of the Boosting the Local Care Workforce program and extending it to 30 June 2023.
- Attracting workers to a career in the broader care and support sector by expanding the scope of the NDIS Jobs and Market Fund communications campaign.
- Identifying opportunities for regulatory alignment and reducing the administrative burden for the care and support workforce.

Considering opportunities for alignment is consistent with the new approach that aged care facilities that provide services to NDIS participants are subject to the jurisdiction of the NDIS Quality and Safety Commission. However, there are also complexities in aligning regulatory frameworks across sectors that service different clients with specific needs.

While there are common elements and opportunities to increase regulatory alignment for providers and workers across the sectors, it is important that any alignment or streamlining does not result in a reduction in the safeguards offered under the NDIS.

For example, on 1 February 2021, a new system of national worker screening checks for NDIS came into effect. Considerable work has been undertaken to develop a nationally consistent system. The NDIS requirements set the highest standard of worker screening across any sector. It is vital safeguards for NDIS participants are not reduced through alignment with other systems.

Similarly, while mutual recognition of professional qualifications can increase efficiency and support greater workforce mobility, it is important to note the significant differences in the workforce requirements across the disability, aged care and veterans' care and support sectors. Importantly, the NDIS is leading a transformation away from the concept of 'care' to empowering participants through 'support'. The disability workforce needs skills in supporting people with disability towards increased choice, control, skills, independence, and social and economic inclusion. The difference in skill sets that may be required across different sectors should not be minimised or ignored in order to achieve efficiencies.

Regulation of quality

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The NDIA intention to enable longer plan lengths.
- The Queensland Government would appreciate further advice from the QPC as to whether additional consumer protection mechanisms should be in place before extended service agreements are introduced.
- If there is benefit, as part of reporting on the incidence and context of harm, in disaggregating data to enable identification of specific cohorts or systemic issues which require a policy response to minimise risks of harm
- As well as the benefits that may arise, the complexities that may be present in aligning regulatory frameworks across sectors.
- The need to ensure that the specialist skill set required to support people with disability is recognised.

2.6 Addressing workforce issues

The future role of Allied Health Assistant in the NDIS

Draft QPC Recommendations

Draft Recommendation 13

The Queensland Government should fund a pilot for Allied Health Assistant roles to better understand the role in the context of disability services, particularly in relation to delegation and supervision, and risk management. Greater use of Allied Health Assistants can help alleviate some of the shortage of allied health professionals and provide a pathway for support workers or new workers to the industry seeking to increase their skill levels. The pilot should be led and coordinated by industry.

Comments

The draft QPC report recommends the Queensland Government fund a pilot for Allied Health Assistant Roles.

The recommendation may assist to spread needed skills into the market and provides the opportunity to test alternative workforce solutions to alleviate the limited availability of allied health professionals, particularly in areas of high need such as rural and remote regions. However, there a range of implementation issues that will need to be worked through given the link to national professional bodies, registration, and industrial issues.

Safeguards

Further information for consideration

Queensland Health, through the Allied Health Professions' Office of Queensland, has an established Allied Health Assistant Framework referenced in the draft QPC report. The Allied Health Professions' Office of Queensland continues to undertake work that supports safe and effective delegation of allied health tasks, including the development of a delegation framework, revising the Allied Health Assistant Framework and developing a new delegation training package. These resources have been designed specifically for the health sector and are not necessarily fit for purpose for the disability context. Clinical governance arrangements will need to be defined to enable appropriate and safe delegation to allied health assistants in the disability sector, including the supervision of allied health assistants by appropriately qualified allied health professionals.

Queensland Government agencies have also noted that in developing the role, consideration needs to be given to using allied health assistants with younger cohorts with a particular focus on the expertise required and any additional risks and supervision requirements.

Aboriginal and Torres Strait Islander peoples

Further information for consideration

Opportunities to include strategies which increase numbers of Aboriginal and Torres Strait Islander people employed as Allied Health Assistants should also be considered given the shortage of allied health services to provide NDIS services in Aboriginal and Torres Strait Islander communities.

Roles and responsibilities

Further information for consideration

The development of the NDIS National Workforce Plan is being led by the Commonwealth in consultation with states and territories, the NDIA and NDIS Commission, peak bodies, workers' unions, providers, skills councils, training organisations and participants. Once finalised, the National NDIS Workforce Plan is intended to attract and retain a world-leading disability workforce.

The responsibility for funding pilots of this nature will need to be considered in the context of the finalisation of this NDIS National Workforce Plan.

Disability-related qualifications

Draft QPC Recommendations

Draft Recommendation 14

In response to economic conditions arising from COVID-19, and given persistent challenges in attracting support workers to the disability sector, the Queensland Government should temporarily relax the eligibility criteria for the CERT III Guarantee to allow workers who already have a CERT III to receive funding assistance for a disability sector related CERT III.

Comments

The draft QPC report recommends the Queensland Government temporarily relax the eligibility criteria for the CERT III Guarantee to allow workers who already have a CERT III to receive funding assistance for a disability sector related CERT III.

Current initiatives

Further information for consideration

The Certificate III in Individual Support is the primary training pathway for aged and disability carers. This qualification has experienced the highest growth in Queensland, with 3,744 additional students enrolling in 2019-20 compared with the previous year, with \$7.70 million in additional funding.

There may be a number of ways to achieve the intent of providing greater access to disability sector related CERT III. For example, under the Queensland 2020-21 *Budget Free TAFE to Queenslanders Under 25* was extended, including access to the Certificate III in Individual Support.

\$21 million has also been provided to extend Free TAFE and Free apprenticeships to Queenslanders aged under 25. This opportunity has already been available to Queenslanders aged under 21, providing training opportunities to more than 24,000 young people. Extending that to under 25s means another 37,000 young Queenslanders will be able to get world-class vocational training for free in priority qualifications.
(Queensland Budget Highlights 2020-21)

Work placements

Further information for consideration

The Certificate III in Individual Support, which is the primary training pathway for aged and disability carers, includes a requirement for work placements. Over 80% of graduates undertake the ageing stream, which may be attributed to a lower number of residential disability services to facilitate placements.

It may be beneficial to consider whether there are ways to increase the availability of student placements in the disability sector that could assist in increasing the number of people engaged in the disability stream for the Certificate III.

Addressing workforce issues

Summary of suggested considerations

QPC may like to consider the following issues further:

- The need for appropriate clinical governance arrangements to be developed to fit with the needs of the disability sector to support an increased role for Allied Health Professionals.
- The opportunity for strategies to increase numbers of Aboriginal and Torres Strait Islander people employed as Allied Health Assistants could be explored.
- The need for flexibility in how a pilot for Allied Health Assistant roles could be funded and implemented.
- It may be beneficial for Recommendation 14 to emphasise the objective of increasing participation in disability-related qualifications rather than prescribing the mechanism by which it will occur. This would allow for further analysis to determine the most effective approach.

2.7 Assessment of thin markets

Draft QPC Recommendations

Supply Side Issues Information Request

The Commission is seeking further information on:

- the experience of self-managed and plan-managed participants in accessing the wider market and how it differs from the registered provider market
- how the 'thinness' of markets can be better measured
- whether the measures presented by the Commission accord with experience in the NDIS market
- which supports participants have the most difficulty in obtaining
- what aspects of a service, such as timeliness, quality or price, are most problematic
- what impact these difficulties have
- the size of search and switching costs, and the resulting strategies used by participants and support coordinators.

Comments

The draft QPC report seeks further information on supply side issues.

Further information for consideration

The analysis of the prevalence of thin markets in Queensland presented by the QPC will help to inform future analysis and discussions at the national level.

It is noted that the use of provider registration groups has limitations including that some services within a group are not interchangeable, and that there is no indication of whether available services are experienced in delivering supports in the disability context.

Given these limitations, and that data is only available for registered providers, there may be a need to combine data analysis with local market intelligence collected by Local Area Coordinators and other intermediaries for a more fulsome assessment of thin markets.

Additionally, outreach by the NDIA to participants who may be vulnerable and also not utilising large proportions of their plan may be needed to understand whether thin sub-markets are driving underutilisation and impacting outcomes.

The views of QPC on whether it would be of value to collect qualitative information to supplement existing data, and appropriate mechanisms for collecting such information would be welcomed.

Improving access to the NDIS

Summary of suggested considerations

QPC may like to consider the following issue further:

- The views of QPC on whether it would be of value to combine data analysis in relation to thin markets with local market intelligence and qualitative information from NDIS participants would be welcomed.

3. Improving Price Regulation

3.1 Pathway to pricing deregulation

Draft QPC Recommendations

Draft Recommendation 17

The Queensland Government should propose that the NDIA include price monitoring and release of price information as additional regulatory tools to be used as part of a pathway towards more light-handed regulation.

Any change to pricing arrangements for an individual market should be signalled well in advance of the change.

Draft Recommendation 18

The Queensland Government should propose that the NDIA treat plan-managed participants capable of self-management (or capable of self-management with the provision of additional supports) similarly to self-managed participants in terms of the application of price regulation. The Price Guide should continue to apply in terms of the recording of payments at cost item level to facilitate price monitoring.

Draft Recommendation 19

The Queensland Government should support the rollback of price cap regulation for price-controlled supports by no later than the end of 2022–23 for the majority of Queensland participants.

Establishing a target timeframe will assist in providing greater certainty for investment planning.

Draft Recommendation 20

The Queensland Government should propose that the NDIA provide administrative payments data to an accredited provider/s for the establishment of a price comparator website for use by all providers, participants and other interested stakeholders.

Comments

The draft QPC report recommends action towards a more light-handed regulatory approach for pricing (rather than centrally set price caps) in sub-markets with sufficient competition, to encourage the operation of a more efficient market.

Consumer protections

Areas of potential further analysis and advice

It is noted that inaction and delaying price deregulation could risk participant outcomes:

Market uncertainties, lags in data, risk-aversion by the regulator and, potentially, regulatory conflicts-of-interest present a risk that deregulation or a shift to a more light-handed regulatory approach to prices will occur at a slower pace than is in the best interests of consumers. (QPC draft report, p223)

A timeframe for deregulation would need to be agreed at the national level and be preceded by DRMM agreement on the pre-conditions for deregulation. It is likely that a significant challenge in moving towards price deregulation for the NDIS will be in providing confidence that there are adequate non-pricing consumer protections in place to protect against monopoly pricing and the risk of participants being able to source quality and affordable supports.

The case for price deregulation of a market towards either no price regulation or a more light-handed approach is stronger where other non-price forms of customer protections exist, and these protections are effective. (QPC draft report, p.229)

The burden associated with monopoly pricing in the NDIS could be significant, with potential risks to health and wellbeing. An analysis of what consumer protections might look like will help guide discussions at the national level. Analysis on whether the consumer protections mentioned in the draft report are transferrable to the NDIS context would be welcomed, as well as advice as to whether additional consumer protections or supports would be needed for NDIS participants in a deregulated market.

A plan toward deregulation

The QPC draft report recommends that Queensland Government (Recommendation 19) should support the rollback of price cap regulation for price-controlled supports by no later than the end of 2022–23 for the majority of Queensland participants.

Areas of potential further analysis and advice

QPC's analysis on pricing and market development issues will inform the market effectiveness project and contribute to the development of pricing policy at the national level.

To this end, it would be beneficial for the QPC to provide additional advice in relation to:

- the evidence base to support pricing deregulation by 2022-23
- if there are benefits of increasing the independence of the Pricing Reference Group as opposed to an independent price monitoring and setting body
- the metrics that could be used to determine if certain regions or types of support were ready for pricing deregulation
- any alternative arrangements or preparatory activities that may be required for regional and remote communities and for service sub-markets that are not mature enough to support open market operation
- whether, based on the Inquiry, there are any sub-markets where outcomes-based pricing (briefly discussed in the report) could be considered
- the best approach to ensuring the staging and planning of appropriate reform to ensure a balance between moving towards pricing deregulation with a need to ensure participant safety and build confidence in the market over time.

Plan managed participants

The QPC draft report recommends that the Queensland Government should propose that the NDIA treat plan-managed participants capable of self-management (or capable of self-management with the provision of additional supports) similarly to self-managed participants in terms of the application of price regulation (Recommendation 18)

Further information to be considered

Queensland Government agencies have noted that, for a number of cohorts, this approach may not be appropriate:

- Self-management of plans is not appropriate, and against policy, for children in care where Child Safety is the child's representative—Child Safety agency-manages plans as a default.
- Many individuals in custody with a disability do not have the capacity to self-manage and require significant support.

In addition, it is noted that implementation of this recommendation is likely to be complex to implement and it may become redundant once broader pricing deregulation occurs. It would be beneficial to understand if the suggested approach to moving plan managed participants towards

price deregulation is considered a short-term solution or an important step in the broader path to deregulation.

Pathway to price deregulation

Summary of suggested considerations

QPC may wish to consider the following issues further:

- What consumer protections to support pricing deregulation might look like in NDIS context.
- If it would be beneficial for a pricing deregulation strategy to be developed and endorsed by DRMM to plot a pathway to deregulation outlining:

the evidence base to support pricing deregulation by a specified timeframe

the metrics that could be used to determine if certain regions or types of support were ready for pricing deregulation

any alternative arrangements or preparatory activities that may be required, in particular for regional and remote communities and for service sub-markets that are not mature enough to support open market operation

the best approach to ensuring the staging and planning of appropriate reform to ensure a balance between moving towards the ultimate goal of pricing deregulation with a need to ensure participant safety and build confidence in the market over time.

- If there are sufficient longer-term benefits in treating capable plan managed participants similarly to self-managed participants in terms of pricing regulation (recommendation 18).

4. NDIS Accommodation and Supported Independent Living

4.1 Disability Housing

Draft QPC findings

Draft Finding 12

Appropriate accommodation is important for the quality of life and social and economic participation for people with a disability, as it is for people generally.

Around 6.8 per cent of NDIS participants are expected to require specialist disability accommodation, the provision of which the NDIA assists. However, a large majority of NDIS participants do not require specialist disability accommodation and will source their accommodation from the broader housing market.

The appropriateness of specialist disability and other accommodation for NDIS participants will influence their quality of life and the effectiveness of the NDIS in improving participant outcomes.

Draft Finding 13

Queensland's market for specialist disability accommodation (SDA) remains immature. There is evidence that:

- access to SDA in participants' plans is low relative to projected participation and below that of other states
- the overall supply of SDA in Queensland is below projected levels, and below that of other states
- many people with disability are housed in inappropriate accommodation, including aged care and hospitals
- there are imbalances in the supply and demand of SDA across regions, including no SDA in Outback Queensland and no robust housing in most regions.

Compared to other states and territories, Queensland also has the lowest proportion of supported independent living supports relative to expected full scheme participation. The market for SDA is inherently riskier than other types of housing. The lack of market information about supply of and participant demand for SDA, and difficulties in matching tenants in SDA are impeding investment.

Comments

Opportunities to increase disability housing supply to maximise benefits of NDIS participation

The QPC draft report finds that the NDIS is not designed to meet the broader housing needs of NDIS participants and that around 93 per cent of participants are not expected to access SDA. It also highlights the importance of suitable accommodation in maximising the investment in NDIS supports and initiatives to address individual capacity building and community, social and economic participation (page 279 and Draft Finding 12, page 280).

Further information to be considered

Under the NDIS Applied Principles and Tables of Supports (APTOS), the Commonwealth, through the NDIA, is responsible for SDA and working with other parties to facilitate appropriate housing options to improve choices for people with disability, including through developing partnerships with housing providers and influencing housing options and housing design.

States and Territories are responsible for encouraging innovative models of affordable and accessible housing investment by private or corporate investors. Queensland delivers on this responsibility by working closely with the Commonwealth, NDIA and prospective housing providers to identify gaps and solutions, and advocate for information to encourage provider confidence to build innovative housing for people with disability, including SDA.

Areas of potential further analysis and advice

Given the State's significant investment in the NDIS and interest in maximising the benefits of the scheme for eligible Queenslanders with a disability, it will be important the Queensland Government is discharging its role under the APTOS to the fullest extent possible.

In the context of the agreed responsibilities under the APTOS, the Queensland Government would welcome advice as to whether the QPC has identified any specific actions that should be progressed to increase the supply of disability housing for NDIS participants outside of SDA.

Factors contributing to inappropriate accommodation settings

The draft QPC report specifically notes that many people with disability are housed in inappropriate accommodation, including aged care and hospitals.

Further information for consideration

Supply gaps for supports and services for participants with complex needs are contributing to people with disability remaining in hospital for longer than is medically necessary. The Queensland Government (through Queensland Health) has noted:

- The quality of providers in the market is not able to meet the complex needs of many patients being discharged from hospital. They often do not have a sufficiently skilled workforce to accept referrals immediately or to sustain the levels of care that are required within the community.
- Identifying providers that have the skills to manage participants with behaviours of concern and disability-related health supports continues to be an ongoing issue that delays discharge. The medium-term accommodation market also requires ongoing development as it does not appear ready to support a more complex cohort.
- Participants with complex needs and limited informal supports often do not have the choice of being self-managed and are limited to registered providers.

Significant progress was made in enabling NDIS participants to be discharged from hospitals during the COVID-19 pandemic. The Queensland Government will continue to use bilateral and national governance mechanisms to advocate for this effort to continue and broaden to other settings such as improving discharge from custodial environments.

Inclusive Communities

While the draft report notes everyone has some degree of constraint on their housing choices based on affordability (page 267), the NDIS is an opportunity to challenge traditional thinking about housing for people with disability and ensure housing solutions are inclusive, accessible, person-centred and provide long-term market-led housing outcomes.

Further information for consideration

The Queensland Government *Housing Principles for Inclusive Communities - Rights, Control, Choice and Inclusion* aim to ensure that people with disability have choice about where they live, with whom they live and that they should not be obliged to live under a particular arrangement.

It may be beneficial for any recommendations in relation to disability housing to acknowledge that mechanisms should align with the Housing Principles and ensure the housing market is developed in response to individual needs and within mixed and inclusive communities.

Identification of disability housing issues

A number of recent inquiries (including the Tune Review and the Disability Royal Commission) have identified ongoing and systemic housing issues for people with disability.

Areas of potential further analysis and advice

It would be beneficial for the QPC to consolidate the outcomes of their consultations and analysis with the issues identified through recent inquiry processes and research conducted by the Summer Foundation on supply and demand (2020a and 2020b) to identify synergies.

Specialist disability accommodation

The draft QPC report:

- identifies issues with supply and the risks of investing in SDA arising from uncertainty, regulatory requirements that raise costs, and coordination and information problems (page 266)
- notes the SDA market is still emerging (QPC Draft Report page 274) as investors are still growing their understanding of the risks and opportunities
- notes the supply of SDA in Queensland is below that in other states and that this can be partially explained by the later commencement of the NDIS in Queensland and that Queensland had a lower base level of SDA type housing (QPC Draft Report page 253)
- references findings of the Australian Housing and Urban Research Institute that financing was not a major barrier to investing in SDA but rather that the costs associated with acquiring specialist knowledge on the SDA market and processes were the greatest cost barrier (page 270).

Areas of potential further analysis and advice

The draft QPC report provides a range of information about factors impacting on the potential growth of the SDA market and makes recommendations in relation to improving the availability of more granular information as being key to stimulating growth.

However, given the extensive analysis outlined in the draft report, further recommendations and advice from the QPC would be welcomed in relation to any other actions that could be taken beyond increasing the availability of data that could take to assist in stimulating the growth of SDA in Queensland, noting that SDA is the primary responsibility of the Commonwealth (through the NDIA). For example, it would be beneficial for QPC to consider if further recommendations in the final report could address issues such as:

- locations of primary demand and type of SDA required
- if there are actions that could assist in fast tracking development of SDA and if this would be desirable
- whether beyond the provision of additional data, there are other actions that could be taken to address provider concerns, such as managing vacancy risks or providing further assistance to investors to navigate the SDA processes.

Supported independent living

The draft QPC report notes the Supported Independent Living (SIL) market is developing in Queensland slower than in other States and Territories (QPC Draft Report page 258).

This observation is based on:

- the fact that Queensland has the lowest proportion of SIL participants relative to projected full scheme participation (4 per cent) in comparison to all other States and Territories (4.9 to 8.7 per cent), except Victoria (also 4 per cent);
- stakeholder feedback that there are shortages in supply (QPC Draft Report page 260);

- the proportion of SIL participants reporting the NDIS has helped them with choice and control is lower than for non-SIL or SDA participants, suggesting SIL participants are less satisfied with the available choice of providers (QPC Draft Report page 260).

However, the QPC draft report also acknowledges there is a lack of market data on the supply and demand for SIL.

Areas of potential further analysis and advice

It would be beneficial to understand whether the lower proportion of SIL participants can be largely attributable to the lower rates of participants entering the scheme. In addition, the QPC could also consider whether:

- the rate of SIL participant growth since the end of regional transition can provide any insight into how the market is growing in response to new participants entering the scheme; and
- whether there has been commensurate growth in active providers of SIL supports, and if this growth has had any impact on choice and control measures for SIL participants.

Disability housing

Summary of suggested considerations

QPC may wish to consider the following issues further:

- whether in the context of the agreed responsibilities under the APTOS, the Queensland Government should consider any specific actions to increase the supply of disability housing for NDIS participants outside of SDA
- if there are specific recommendations that the QPC could make to address the factors impacting on people with disability residing in inappropriate settings
- the Queensland Government *Housing Principles for Inclusive Communities - Rights, Control, Choice and Inclusion*
- potential synergies between the outcomes of QPC's consultations and analysis with issues identified through recent inquiry processes, and research findings by the Summer Foundation
- whether the lower proportion of SIL participants can be largely attributable to the lower rates of participants entering the scheme.
- whether the rate of SIL participant growth since the end of regional transition can provide any insight into how the market is growing in response to new participants entering the scheme
- whether there has been commensurate growth in active providers of SIL supports, and if this growth has had any impact on choice and control measures for SIL participants.

4.2 Improving data on supply and demand

Draft QPC Recommendations

Draft Recommendation 21

The Queensland Government should propose that the NDIA increase the ready availability of market information on the demand for and supply of specialist disability accommodation (SDA) and supported independent living (SIL) support. This should include the preferences and needs of participants likely to require accommodation, while protecting participant privacy.

Information should be available on:

- the number of participant plans with SDA and SIL support funding, by:
 - location at a detailed level
 - type of accommodation required
 - current living arrangements
- the number of existing SDA and SIL places, by:
 - location at a detailed level
 - occupancy status
 - dwelling type, design category, size
 - construction status
- for more general accommodation needs:
 - location of participants by disability
 - availability of accessible housing.

Comments

Data

The QPC draft report (QPC Draft Report page 277) notes that since the Queensland Government submission to the QPC Inquiry was lodged in August 2020, the NDIA Scheme Actuary has released improved SDA supply and demand data (released 27 October 2020 <https://data.ndis.gov.au/data-downloads>).

Further information for consideration

While the available data is a marked improvement on previous information, to better understand participants' preferences and housing needs, future data releases could include:

Participant Demand

- data should identify how many bedrooms individual participants are seeking as some may be seeking to move into SDA with family members to ensure informal support arrangements can remain intact and cultural needs are met
- given the diversity of robust accommodation, further information needs to be available on the specific design needs of participants requiring this type of build to better inform the market
- data should specify location where the participant currently resides and the area in which they are seeking SDA
- for general housing other than SDA and SIL which could inform responses from the broader housing market to the need for accessible and affordable accommodation options.

In providing more granular supply information for SDA in rural and remote locations, there will be a need for the NDIA to manage privacy risks when reporting small numbers of SDA demand data.

In addition, future data releases could also include further information in relation to supply data, for example:

- where data is available on the SDA properties with multiple bedrooms (3 or more), it is unclear whether they were designed with the intent to house multiple people with SDA in their plan, or one person with SDA in their plan and other people of their choice (e.g. family)
- the vacancy rate in each location would be useful to assist in gauging supply and demand
- more granular supply information for SDA in rural and remote locations (due to the large geographic areas captured by Statistical Area catchments in rural and remote areas, this should be represented at least by postcode)
- the availability of stock should also include if participants have been allocated a tenancy to highlight upcoming capacity as well as development.

Separation of SDA and SIL

The draft report considers the potential impact on economies of scale which may result from the separation of SDA and/or SIL from the provision of other supports.

Further information for consideration

Any potential financial impacts of separating SDA and SIL should be balanced with the need to ensure risks arising from conflict of interest are addressed. The development of clear guidelines to separate accommodation type with models of support could assist.

General accommodation needs data

The draft report notes the needs to make further information available in relation to location of participants by disability and the availability of accessible housing.

Further information for consideration

QPC may wish to consider whether the recommendation about general accommodation needs data to stimulate market growth could be strengthened by expanding the information to include participant housing needs and preferences. For example, all housing data should be disaggregated to provide information on demand and supply issues for Aboriginal and Torres Strait Islander participants. Additional market information on the demand for and supply of SDA and SIL may also assist prisoners with a disability to access appropriate housing on release.

Further consideration may be required in relation to the suggestion that the NDIA release the location of participants by disability. Geographical mapping of participants by disability should only incorporate participants who have expressed a desire or a need for housing or housing supports in their NDIS plans and any data release should protect their privacy. Rather than mapping participants by disability, mapping participants by expressed housing need or preference could provide demand signals to the market.

Improving data on supply and demand

Summary of suggested considerations

QPC may wish to consider the following issues further:

- Whether further specificity by the NDIA in future data releases (as outlined above) could assist in providing a more complete picture of demand and supply for disability housing, including SDA and SIL.
- How best to balance the need for more granular data with privacy concerns.
- The need to balance the risks associated with SDA and SIL being provided by one provider.

4.3 Streamlining housing pathways

Draft QPC Recommendation

Draft Recommendation 22

The Queensland Government should propose that the NDIA investigate ways to streamline and align SDA, home modification and SIL access processes in order to provide faster access for participants and clearer signals to providers. Participants' eligibility should be determined regardless of their access to a support or the presence of a provider.

Comments

The draft QPC report recommends the Queensland Government advocate for the streamlining of housing pathways.

Enabling participants to have SDA or SIL approved in advance, with no additional approval required if an option was identified within that price range, would resolve difficulties such as participants losing access to desired options due to process delays. Determining eligibility based on need rather than the availability of a provider aligns more with the principles of the NDIS and would potentially help to boost supply in areas of thin markets.

Joint Standing Committee report

Further information for consideration

The Joint Standing Committee on the NDIS's report of their inquiry into SIL (JSC SIL Inquiry) found onerous approval processes attached to SDA and SIL meant participants who required access to both supports reported experiencing funding delays as well as having to apply separately, even when the same disability and needs generate entitlement to both supports. The JSC SIL Inquiry recommended mechanisms to streamline approval processes (recommendation 28) for participants requiring both SDA and SIL, and the provision of automatic SIL approval for SDA recipients requiring on-site overnight assistance (recommendation 29, p.100). The QPC's recommendation to 'align' SDA, home modifications and SIL access processes, and provide 'clearer signals to providers' appears to align with the JSC SIL findings and recommendation.

NDIA review

Further information for consideration

The NDIA has recently conducted a review of operational guidelines for SIL to maximise participant choice and control in response to a recommendation from the Tune Review.

Role of Support Coordinators and Planners

Further information for consideration

Providing NDIS participants with early, clear and streamlined information about what funding they are eligible for enables participants to work with their support coordinators and mainstream agencies to plan longer term housing and disability support solutions in a coordinated way. Specialist training for Support Coordinators and Planners could be explored to ensure participants are empowered and supported to make informed decisions about their living arrangements.

Medium Term Accommodation

Further information for consideration

Medium Term Accommodation is also an important policy and funding component of the housing pathway and is an area that requires further consideration when considering ways to streamline and align SDA, home modification and SIL access processes. Early identification of eligibility and

requirement for Medium Term Accommodation will inform conversations with SDA developers and improve coordination of care.

Streamlining housing pathways

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The synergies of Recommendation 22 with the recommendations of the JSC.
- The work NDIA has recently conducted to review operational guidelines for SIL to maximise participant choice and control in response to a recommendation from the Tune Review.
- It there would be value in exploring specialist training for Support Coordinators and Planners to ensure participants are empowered and supported to make informed decisions about their living arrangements.
- How Medium-Term Accommodation policy and processes can complement and strengthen the access process for SDA and SIL.

5. Participant employment outcomes

5.1 Improving participant employment outcomes

Draft QPC Recommendations

Draft Recommendation 23

The Queensland Government should propose that the NDIA be required to report publicly annually on its progress and performance in implementing the NDIS Participant Employment Strategy 2019–2022.

Draft Recommendation 25

The Queensland Government should propose that the NDIA make available employment information that would help participants select a provider for employment-related supports, including information which allows comparison of the success rates of providers in supporting participants to find and maintain employment.

Draft Recommendation 26

The Queensland Government should propose that the NDIA review its processes related to assisting people into employment with the objective of significantly reducing the time period between when an employer shows interest in a jobseeker and the first day of employment.

Comments

The draft QPC report notes that ‘substantial effort will be required to achieve the improved employment outcomes that were envisioned with the introduction of the NDIS’ (QPC Draft Report, p.284) and has made a number of recommendations designed to improve participant employment outcomes.

Further information for consideration

Access to employment benefits individuals and their families and has broader economic benefits. QPC notes that in order to achieve these benefits it will require coordinated action from all levels of government (QPC Draft Report, p.287). The new National Disability Strategy (and State and Territory Disability Plans) will provide an opportunity for this coordinated action to occur.

As a national issue, it may also be appropriate for the Queensland Government to advocate for an increased focus on participant employment outcomes through DRMM, through oversight of the development of the new National Disability Strategy.

In addition, the broader role of the Commonwealth Government in helping people with disability to find and maintain work could be explored as well as the ability of Individual Linkages and Capacity Building programs to assist people to find employment.

Improving participant employment outcomes

Summary of suggested considerations

QPC may wish to consider the following issue further:

- If there are other opportunities, such as the National Disability Strategy, for the Queensland Government to advocate to increase employment outcomes for participants.

6. The NDIS in rural and remote areas

6.1 Addressing thin markets in rural and remote areas

Draft QPC Recommendation

Draft Recommendation 27

The Queensland Government should propose that the NDIS Thin Markets Project prioritise the development of a thin market framework that:

- establishes arrangements for identifying thin markets and developing timely responses
- responds to the underlying causes of thin markets on a case-by-case basis
- considers options for improved market coordination, including mechanisms to facilitate coordinated purchasing among participants
- considers alternative commissioning models for purchasing supports where other market-oriented options are not viable
- ensures thin market responses are adequately and consistently evaluated and reported.

Comments

The QPC draft report recommends a range of matters to be considered as part of the development of a national thin market framework.

Focus points of a thin market strategy

Further information for consideration

Queensland Government agencies have provided feedback that in delivering the NDIS Thin Markets Project, there needs to be a specific focus on addressing thin markets for:

- Aboriginal and Torres Strait Islander people (noting the measures related to disability services agreed to under the National Agreement on Closing the Gap)
- children and young people with disability in rural and remote areas and their parents and carers with particular consideration to be given to those who identify as First Nations people
- people with extremely complex support needs who require robust accommodation and highly skilled behaviour supports to avoid prolonged periods of hospitalisation.

services and supports for people with a disability interacting with the criminal justice system, the youth justice system and the child protection system with a focus on the particular needs of Aboriginal and Torres Islander people . **Alternative commission models**

It is appropriate to consider alternative commissioning approaches for thin markets (both geographic markets and specific service types) with very low supply and plan utilisation to ensure there is equitable access to NDIS supports for all participants.

However, there is a need to ensure that alternative commissioning approaches are implemented alongside:

- strategies to build community capacity and capability to deliver support
- appropriate safeguards to ensure they are undertaken in a fair, participant-focussed way while recognising the necessary limits on choice and control in unavoidably thin markets.

Addressing thin markets and rural and remote areas

Summary of suggested considerations

QPC may wish to consider the following issues further:

- If there are particular geographic locations, cohorts or service types that should be of primary focus in the development and implementation of a strategic thin market framework.
- If particular safeguards are required in relation to the use of alternative commissioning models to address the underlying cause of market failure and ensure choice and control for participants to the maximum extent possible.

7. First Nations People and the NDIS

7.1 Delivery of the NDIS to Aboriginal and Torres Strait Islander people

Draft QPC Recommendation

Draft Recommendation 30

To improve the evidence base of what works for the delivery of the NDIS and disability supports to Aboriginal and Torres Strait Islander people, the Queensland Government should:

- evaluate and report on initiatives for which the Queensland Government is responsible
- propose that the NDIA evaluate and publicly report on initiatives undertaken to improve delivery of the NDIS to Aboriginal and Torres Strait Islander people with a disability, their families, carers and communities.

Comments

Roles and responsibilities

The draft QPC report recommends that the Queensland Government should evaluate and report on initiatives for which the Queensland Government is responsible.

Further information for consideration

The respective roles and responsibilities of the Commonwealth and Queensland Government under the NDIS should be recognised, with the Queensland Government having limited opportunities to evaluate policies and programs.

However, it is noted there will be an opportunity to evaluate the Disability Connect and Outreach Program, which is run by the Queensland Government as part of a \$20 Million Commonwealth Government investment to increase participation in Queensland. This program includes a Building Market Capacity Project which will develop, implement and test an approach for supporting Aboriginal and Torres Strait Islander corporations and individuals to become active registered providers in rural, regional and remote communities where the number of available providers is insufficient to meet the demand for services. The project will also design and test an approach to increasing the awareness of existing culturally appropriate service providers to leverage and realise economic opportunities created by the NDIS.

Learnings about what additional factors are needed to grow this part of the service market will be provided to the NDIA to assist in facilitating a longer-term increase in support options for Aboriginal and Torres Strait Islander people living with disability.

Understanding the needs of Aboriginal and Torres Strait Islander communities and peoples

The QPC draft report provides analysis on a range of matters relating to improving participant access, participant experience and market growth in Aboriginal and Torres Strait Islander communities.

Opportunity for further analysis/advice

The Queensland Government noted in its submission to the Inquiry that some Aboriginal and Torres Strait Islander people faced barriers accessing the NDIS and securing supports and services that are culturally sensitive, accessible and local.

It is important to build a shared understanding and evidence on how the NDIS will deliver its intended outcomes for Aboriginal and Torres Strait Islander people across urban, regional and remote locations as there will be unique issues dependent on the location of the participant.

In particular, Queensland Government agencies are keen to understand:

- whether underutilisation of plan budgets by Aboriginal and Torres Strait Islander peoples is related to lack of plan flexibility, lack of culturally appropriate services, or other factors.
- whether stronger connections between the NDIA and community-controlled organisations can be established to improve the delivery of disability services in remote communities.

Delivery of the NDIS to Aboriginal and Torres Strait Islander people

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The respective roles and responsibilities of the Commonwealth and Queensland Governments under the NDIS for evaluating the delivery of the NDIS to Aboriginal and Torres Strait Islander people
- The Queensland Government would welcome further advice from the QPC in relation to:
 1. causes of underutilisation by Aboriginal and Torres Strait Islander participants
 2. whether stronger connections between the NDIA and community-controlled organisations can be established to improve the delivery of disability services in remote communities
- If there would be benefit in the recommendation reflecting that evidence needs to be built across a wide range of contexts and experiences, including people living in very remote communities, those interacting with the criminal justice system and children in the child protection system.

7.2 Support to navigate NDIS worker screening requirements

Draft QPC Recommendation

Draft Recommendation 32

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDATSIP) should provide supports for Aboriginal and Torres Strait Islander people regarding worker screening requirements under the *Disability Services Act 2006*. In developing these supports, the Department should consider recommendation 73 of the Queensland Family and Child Commission's 2017 Review of the blue card system and whether similar reforms should be applied in respect of the yellow card system.

Comments

The QPC draft report recommends that DSDATSIP provide supports for Aboriginal and Torres Strait Islander people in meeting disability worker screening requirements.

Further information for consideration

Aboriginal and Torres Strait Islander peoples may experience barriers in accessing yellow cards, as noted by the Queensland Human Rights Commission before the recent Queensland Parliamentary Committee Inquiry into the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020.

The draft QPC report notes that the former Department of Communities, Disability Services and Seniors confirmed the implementation of the legislation will include the development of an Aboriginal and Torres Strait Islander communication and engagement strategy and material specifically for Aboriginal and Torres Strait Islander peoples and communities. The Queensland Parliamentary Committee welcomed this approach.

DSDSATSIP is working with Blue Card Services in the Department of Justice and Attorney-General and other agencies and community stakeholders to develop an Aboriginal and Torres Strait Islander engagement strategy and action plan. The strategy and plan will address the issues raised in the Queensland Family and Child Commission's 2017 review of the blue card system, including recommendation 73. DSDSATSIP will ensure that its strategy and plan will, as far as possible, align with Blue Card Services response to recommendation 73.

Support to navigate NDIS worker screening requirements

Summary of suggested considerations

QPC may wish to consider the following issues further:

- Work the Queensland Government is undertaking to engage with Aboriginal and Torres Strait Islander peoples and communities regarding worker screening reforms.

8. Queensland Government roles and interventions

8.1 Restrictive practices

Draft QPC Recommendation

Draft Recommendation 33

The Queensland Government should promote clarity and efficiency in its restrictive practices' regime, by:

- amending the definitions of types of restrictive practices in the *Disability Services Act 2006* to be consistent with the NDIS restrictive practice rules
- harmonising formal requirements around the content of positive behaviour support plans (PBSPs) to be consistent with the NDIS restrictive practice rules
- reviewing the resources available to and actions undertaken by the Queensland Civil and Administrative Tribunal, the Office of the Public Guardian and the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships to ensure that they are able to adequately manage the authorisation process.

To help foster a market for the private preparation of PBSPs while exercising appropriate caution in ensuring that those being produced are of appropriate quality, the Queensland Government should:

- proceed with its commitment to remove its statutory monopoly for the preparation of PBSPs for seclusion and containment
- signal its intention to withdraw from preparing PBSPs, but in the short term continue to prepare PBSPs and remain a provider of last resort
- as part of its normal authorisation processes, monitor the quality of PBSPs being developed.

Comments

Status of current work

The draft QPC report recommends that the Queensland Government make legislative changes to achieve greater national consistency and review the resources provided for managing the authorisation of restrictive practices in Queensland.

Further information for consideration

The draft report of the QPC notes that Queensland has a well-established legislative framework for restrictive practices authorisation, predominantly based on a guardianship-based model. However, QPC also notes that the regulation of the use of restrictive practices in Queensland, particularly in the context of the NDIS, is complex (QPC Draft Report page 395).

Work is being undertaken at a national level to work towards greater national consistency in relation to the authorisation of restrictive practices. This work is being driven through national principles that have been developed by the NDIS Commission.

Queensland has accepted these principles on an in-principle basis, noting there are potentially significant legislative, operational and financial implications arising from implementation of the principles in Queensland.

In order to assess the potential implications of adopting the draft national principles and more closely aligning Queensland's framework with the NDIS Rules, the Queensland Government has progressed to undertake a review of the authorisation framework in Queensland to consider: whether the current authorisation process for the use of restrictive practices in Queensland could be improved; and the modifications that may be required to comply with the draft national principles.

The draft recommendations of the QPC in relation to amending legislation to achieve greater consistency with the national framework potentially impacts human rights under the *Human Rights Act 2019* and is best considered in the context of the outcomes of the broader review of the authorisation framework in Queensland. Advice on the outcomes of the broader review will be provided to the Queensland Government for consideration in 2021.

Any harmonisation of the Queensland authorisation process with the draft principles for nationally consistent authorisation of restrictive practices will require substantial legislative and policy changes and will potentially have significant resource implications on the Queensland Civil and Administrative Tribunal, statutory bodies and departments involved in the authorisation process.

This requires a considered and careful approach to any reforms to ensure there are no unintended consequences. For example, amending the definitions under the Disability Services Act will significantly increase the scope of the authorisation framework and is likely to result in unprecedented demand on a system that is already experiencing demand increases associated with the transition to the NDIS. Further, any reforms will need to ensure that there is no reduction in safeguards for persons with impaired capacity.

In addition, the recent hearings of the Royal Commission highlighted progress but emphasised the significant work still to be undertaken by the NDIS Commission to improve the capacity and capability of the sector to be able to provide high quality behaviour support services to meet current demand levels.

Roles and responsibilities

The draft report of the QPC recommends that the Queensland Government should:

- proceed with its commitment to remove its statutory monopoly for the preparation of PBSPs for seclusion and containment
- signal its intention to withdraw from preparing PBSPs, but in the short term continue to prepare PBSPs and remain a provider of last resort
- as part of its normal authorisation processes, monitor the quality of PBSPs being developed.

Further information for consideration

The Queensland Government has already publicly committed to removing the statutory role of the department in the preparation of PBSPs involving containment and seclusion and indicated that the primary concern is to ensure that there is a market with sufficient capacity and capability to be able to undertake the functions. The longer-term goal is that these functions should be market driven, like all other NDIS supports, with the Queensland Government not being required to provide a provider of last resort function consistent with the broader approach under the NDIS. However, given that containment and seclusion are the most complex types of restrictive practices, the Queensland Government is cautious to devolve the preparation of the PBSPs to the market until it is confident that the rights of people with a disability will not be compromised.

In addition, while the Queensland Government will continue to have a role in ensuring the quality of PBSPs as part of the authorisation process, it should be noted that the NDIS Commission has primary responsibility for building the capacity and capability of the sector and regulating positive behaviour support, including the preparation of PBSPs.

Restrictive practices

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The current work program already underway to consider the framework for the authorisation of restrictive practices in Queensland.
- The need for a considered, structured, and well-planned approach to any reform of the authorisation process in Queensland, given concerns about the immaturity and thinness of the market for behaviour support services and the potential impact of increased demand on the current system.
- The current evidence base available in relation to the capacity and capability of the behaviour support market in Queensland, in particular in relation to the preparation of containment and seclusion plans.
- The commitment already made by the Queensland Government to remove the role of the department in relation to the preparation of PBSPs involving containment and seclusion.
- The need not to reduce the level of current safeguards for people with disability subject to restrictive practices in Queensland.
- The need for any authorisation scheme for restrictive practices to be consistent with the *Human Rights Act 2019* (Qld).
- The respective roles and responsibilities of the NDIS Commission and Queensland Government in relation to positive behaviour support under the NDIS.
- Adopting an approach where the Queensland Government is the provider of last resort would be inconsistent with the broader policy approach under the NDIS.

8.2 Resolving transport interface issues

Draft QPC Recommendation

Draft Recommendation 34

The Queensland Government should continue to engage in intergovernmental processes aimed at resolving issues around NDIS participant access to transport services generally.

If arrangements for suitable participant disability transport supports in participant plans continue to remain unresolved, the Queensland Government should propose that the Taxi Subsidy Scheme applied to NDIS participants be modified so that equivalent transport options are treated equally.

Comments

The draft report of the QPC recommends that the Queensland Government continue to engage with national processes to resolve issues around NDIS participant access and if unsuccessful, amend the operation of the Taxi Subsidy Scheme in Queensland.

Further information for consideration

The Applied Principles and Tables of Support (APTOS) agreed by the former Council of Australian Government, identify roles and responsibilities for funding transport supports for NDIS participants. Under the APTOS, the NDIS is responsible for the reasonable and necessary costs associated with transport, including taxis and other private transport options for those not able to travel independently.

In October 2019 the former Disability Reform Council agreed that, as an interim solution, the NDIA would implement a funding uplift for NDIS participants and cross-billing arrangements to support the continuation of taxi subsidy scheme membership for NDIS participants, pending the development of a long-term policy in relation to transport supports.

It would be inconsistent with the APTOS for the Queensland Government to take on further responsibility for funding transport supports for NDIS participants by expanding the Taxi Subsidy Scheme on a long-term basis as these transport supports are to be provided under the NDIS. Furthermore, the draft recommendation to amend the Taxi Subsidy Scheme so that subsidies are payable across a range of transport options would require major system and process changes that would incur significant resource impacts for an interim solution.

Based on the APTOS, the Queensland Government is continuing to work with the Commonwealth Government through intergovernmental forums to develop a long-term policy for transport supports for NDIS participants who are Taxi Subsidy Scheme (TSS) members. This work will ensure that the NDIS funds long-term transport supports for Queenslanders so that they do not experience any reduction in transport supports when accessing the NDIS.

NDIS system reform and mainstream interfaces is a priority for DRMM in 2021. This includes resolution of transport issues.

Resolving transport interface issues

Summary of suggested considerations

QPC may wish to consider the following issues further:

- The roles and responsibilities under the APTOS in relation to transport supports.
- The work underway at a national level to ensure that NDIS participants receive reasonable and necessary transport supports.

9. Interactions with Government services

9.1 Building a strong evidence base

Draft QPC Recommendation

Draft Recommendation 35

The Queensland Government should evaluate the effectiveness and efficiency of its interventions to promote access to the NDIS. That evaluation should consider all impacts, including but not limited to the effects on participants, providers, adjacent markets, other Queensland Government services, the Australian Government and NDIA, and adjacent markets (such as allied health).

As part of developing a robust and complete approach, the Queensland Government should consider evaluating and quantifying the impact of NDIS transition on mainstream government services in Queensland, for example the impact of NDIS access on hospital resources.

Comments

The draft report of the QPC recommends the Queensland Government should evaluate:

- the effectiveness and efficiency of its interventions to promote access to the NDIS.
- the impact of NDIS transition on mainstream government services in Queensland.

Roles and responsibilities

Further information for consideration

While the Queensland Government has undertaken a range of activities to promote access during transition and continues to provide services through the Assessment and Referral Teams (through Commonwealth Government funding), it should be noted that promoting and ensuring access to the NDIS is primarily a Commonwealth Government responsibility.

As noted above, the Queensland Government (with funding from the Commonwealth Government) is delivering the Disability Connect and Outreach Program, due for completion due in June 2022. The program includes evaluation activities which will be completed for both the Targeted Outreach Project and the Assessment and Referral Team. It is anticipated that learnings from this work will inform future NDIS outreach programs.

Current work status

Further information for consideration

Queensland is developing an NDIS Assurance Framework to ensure that Queensland's investment in the NDIS is achieving economic, social and community outcomes for participants, market and workforce development, and the scheme represents value for money. Queensland's framework will be aligned with the national NDIS Outcomes Framework where possible. For some performance measures in Queensland's NDIS Assurance Framework, the establishment of new datasets is required.

One of the long-term economic benefits of the NDIS is early intervention and reduced government expenditure. This includes reduced recidivism, reduced hospitalisation and improved education/training outcomes. These are all costs that would otherwise accrue to states and territories through mainstream service provision. Measurement of the scale of these avoided costs is important in assessing the value for money of the scheme.

However, quantifying the impact of the NDIS transition on mainstream government services in Queensland is complex and will likely require data linkages between Queensland Government agencies and the NDIA to establish a direct correlation. The NDIA and Queensland are preparing an enduring Data Sharing Agreement to streamline data sharing arrangements which will better enable

consideration of the evaluation of such impacts over the longer term. In addition, the benefits are likely to take some time to realise as the scheme is still maturing.

At the national level, significant effort is being directed to improving the evaluation of disability programs and policies, NDIS participant outcomes and NDIS performance. QPC may wish to note the recently released 'Improving outcomes for people with disability under the National Disability Strategy and the National Disability Insurance Scheme' paper by the Department of Social Services (2020) which outlines the approach and structure for governments to track the effectiveness of the NDS and NDIS through agreed sets of national outcomes, indicators and measures. Many of these measures will influence the final Queensland Assurance Framework.

The Position Paper for the new National Disability Strategy was also released on 29 July and included a proposal to increase government accountability by having a coordinated approach to evaluation of policies and programs. It is anticipated that the new National Disability Strategy will include a response to the call for greater use of evaluation.

Building a strong evidence base

Summary of suggested considerations

QPC may wish to consider the following issues further:

- It is primarily the role of the Commonwealth Government to promote access to the NDIS.
- The work currently underway to establish a performance and assurance framework at both a national and state level and the future role of the NDS in championing greater use of nationally consistent evaluation.
- The appropriate timeframe for an evaluation of this nature given the need for appropriate data linkages and maturation of the scheme for the benefits to be fully realised.

10. Intergovernmental governance

10.1 Alignment with Disability Reform Ministers' Meeting Priorities

Draft QPC Recommendation

Draft Recommendation 37

To provide effective governance to support the development of the NDIS market, the Queensland Government should propose that the Disability Reform Ministers' Meeting:

- be established as soon as possible
- provides a forum for states and territories to have a continued role in policy development and implementation
- has a clearly defined purpose, including to identify and ensure the implementation of reforms for the NDIS
- has clearly defined roles
- maintains the independence of the NDIA
- publishes regular reports on its progress in delivering its work program
- publicly reports annually on the performance of the NDIA and the NDIS market.

Comments

The draft report of the QPC makes recommendations in relation to the formation of a reframed Disability Reform Ministers Meeting.

Further information for consideration

Since the release of the QPC's draft report, there has been considerable progress in establishing the revitalised governance arrangements and priorities for the Disability Reform Ministers Meeting (DRMM), following the recommendations of the Review of COAG Councils and Ministerial Forums conducted by Mr Peter Conran AM (the Conran Review).

A requirement of the Conran Review was for all ongoing Ministers' Meetings to have an agreed agenda for the next twelve months by 1 February 2021, with a focus on two or three key priorities. At the 4 December 2020 Disability Ministers' Meeting, Ministers agreed to three broad priority workstreams for their workplan over the next 12 months:

- The National Disability Strategy
- NDIS system reform and mainstream interfaces
- Scheme Performance.

Underneath these workstreams will sit a range of sub-priorities, supported by working groups. These will be developed further by the Commonwealth, in consultation with states and territories.

These arrangements provide a forum for states and territories to have a continued role in policy development and implementation.

Queensland will continue to actively contribute to the DRMM and its program of work. To support full scheme operations in Queensland, Queensland has established the Queensland Disability Reform Implementation Interdepartmental Committee (DRIIC) to oversee: the implementation of the Queensland NDIS Full Scheme Agreement; the Queensland Government response to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability; the development and implementation of the new National Disability Strategy; and the State Disability Plan.

DRIIC will be a key advisory body for the Queensland Minister for Disability Services on issues relating to NDIS delivery in Queensland that may need to be raised at the Disability Reform Ministers' Meeting.

Reporting

The draft QPC report recommends that Disability Ministers publish '*regular reports on its progress in delivering its work program*' and '*publicly reports annually on the performance of the NDIA and NDIS market*' (Recommendation 37).

Further information for consideration

To date, the Communiqué has been the vehicle for reporting on outcomes from Disability Ministers' meetings, and it is anticipated that this will continue under new arrangements. Additional reporting from the DRMM on its work program could be duplicative, however Queensland can continue to advocate for the Communiqué to include appropriate statements on strategic direction and progress on key reforms.

Reporting on the performance of the NDIS and NDIS market will occur through the NDS/NDIS Performance Framework once agreed by DRMM and established, as well as existing NDIA reporting requirements such as the Quarterly Report, Corporate Plan and Annual Report. The NDIA Data and Insights website also includes a growing volume of data on participant budgets, active providers, utilisation and market concentration.

Alignment with Disability Reform Ministers' Meeting Priorities

Summary of suggested considerations

QPC may wish to consider the following issues further:

- DRMM governance arrangements and priorities for 2021 are now established. Recommendations that align with the 2021 priorities of the DRMM will have greater chance of being successfully implemented in the next twelve months.
- There are established reporting mechanism in place and under development with DRMM having oversight of these processes.

10.2 Future changes to the NDIS Act

Draft QPC Recommendation

Draft Recommendation 38

The Queensland Government should propose the NDIS Act be amended to

- change the process for agreeing to Category A rules to reduce the time it takes to implement or amend the rules
- incorporate the changes proposed by the Board of Treasurers in its submission to the Tune Review, or other arrangements that would assist the Disability Reform Ministers' Meeting to better understand and oversight the NDIS's financial situation.

Comments

Category A Rules

Category A Rules relate to policy issues with significant financial implications. The process for agreeing to Category A rules is set out in the NDIS Act 2013 (section 209). The Commonwealth Minister for the NDIS writes to disability ministers seeking agreement to the Rule within 28 days. Importantly, Category A Rules can only be made or amended with the universal agreement of all State and Territory Governments. The Commonwealth Minister may take lack of response within the 28 day timeframe as consent, however before the end of the 28 day period, any jurisdiction may write to the Minister requesting a longer period within which to agree to the making of the Rules.

The Queensland Government process for responding to formal requests from the Commonwealth Government to agree to NDIS rule changes is as follows: the Queensland Minister responsible for Disability Services may respond and agree to non-contentious rule changes. However, where proposed rule changes raise contentious policy or resource issues, Cabinet or Cabinet Budget Review Committee consideration is required before a formal response can be provided to the Commonwealth Government. Any proposal to reduce the timeframes for making Category A rule changes would impact significantly and adversely on the effective conduct of Queensland's consideration and approval processes in relation to these important matters.

Financial sustainability

To provide effective strategic oversight, the DRMM requires access to relevant and timely information on financial sustainability, which could be mandated through changes to the NDIS Act. The Tune Review noted the issues regarding financial sustainability raised in the Board of Treasurers' submission, however suggested these would be best prosecuted through the next review of the NDIS Act, currently scheduled for 2021. (P.37 Tune Review).

New reporting mechanisms have been agreed by the former Disability Reform Council which will enhance transparency and support the flow of targeted advice on scheme finances and sustainability to Disability Ministers. A financial sustainability report is to be prepared by the Department of Social Services with input from the NDIA. Queensland will monitor the adequacy and timeliness of these financial sustainability reports over 2021.

Future changes to the NDIS Act

Summary of suggested considerations

QPC may wish to consider the following further:

- The Queensland Government considers the current process for the making of Rules under the NDIS Act provides important safeguards to ensure appropriate timeframes for discussion of significant policy issues and there is a risk that states and territories could be disadvantaged if it were changed.

10.3 Mechanisms for the review of regulatory obligations need to be harmonised

Draft QPC Recommendation

Draft Recommendation 39

The Queensland Government should propose the Disability Reform Ministers' Meeting commission periodic independent reviews of whether the processes for developing new regulatory obligations and the obligations themselves remain fit-for-purpose.

Comments

A key finding of the draft QPC report is that the scheme's regulatory and policy framework is operating in a way that impedes the effective and efficient functioning of the NDIS market and achieving a more balanced regulatory environment will be important in improving market performance.

QPC has observed that 'sunset provisions are often used to review whether regulations remain efficient and effective' and that the 'NDIS Act does not specify an equivalent process to review rules and regulations made under the Act, or operational guidelines and policies that the NDIA and NDIS Quality and Safeguards Commission have introduced.'

However, there are already numerous legislative and regulatory review processes in-place and it will be important that these be harmonised.

Section 208 of the *National Disability Insurance Scheme Act 2013* (Cth) requires the Act to be reviewed (on the second anniversary of its commencement) by a person or persons chosen by the Minister with the agreement of the Ministerial Council, and with the terms of reference agreed to by the Ministerial Council.

The first review of the Act was conducted in 2015 by Ernst and Young to assess the operation of the NDIS Act and consider whether any amendments can be made to better enable government to further the objects and principles of the NDIS Act.

In 2019, the Commonwealth Government commissioned Mr David Tune AO PSM to conduct a review of the NDIS legislation and rules. The aim of the review was to identify opportunities to simplify NDIS processes and inform the development of an NDIS Participant Service Guarantee to set standards for timeframes for NDIS access and planning processes. The Commonwealth published a response to the review on 28 August 2020 and intends to open public consultation on draft amendments to legislation in response to the review in early 2021.

Part Five of the Act sets out the role of the Ministerial Council (now the Disability Reform Ministers Meeting) in making and amending Rules to govern aspects of the Scheme. The Disability Ministers have commissioned reviews of specific policy areas which have led to amendments to NDIS Rules, such as the review of the Specialist Disability Accommodation Pricing and Payments Framework which led to changes in the SDA Rules to increase flexibility for SDA-eligible participants.

The Independent Advisory Council (IAC) is established under section 143 of the NDIS Act to provide advice to the NDIA Board on the way in which the NDIA is performing its functions in relation to key aspects of the scheme including ensuring participants have choice and control and are provided with reasonable and necessary supports. The advice from the IAC can include recommendations to amend policy and associated regulation for example, the recommendation to require the provision of Support Coordination to be separate from the provider of Supported Independent Living Challenges in housing and support under the NDIS, (Independent Advisory Council, November 2019, page 19).

The Joint Standing Committee on the NDIS (JSC) has been established to inquire into the following: the implementation, performance and governance of the NDIS; the administration and expenditure of the NDIS; and such other matters in relation to the NDIS as may be referred to it by either House of

the Parliament. The JSC has conducted inquiries into the general operation of the NDIS, and into specific aspects of the operation of the scheme including NDIS planning and Supported Independent Living. Recommendations from these inquiries can include recommendations to amend the NDIS Act or Rules. In addition, the JSC is conducting an inquiry into the operation of the NDIS Quality and Safeguards Commission to examine systemic and ongoing issues about the operations and framework of the Commission.

In 2016, Disability Ministers endorsed a Regulation Impact Statement (RIS) which had been undertaken to recommend preferred policy options for the regulatory components of the proposed NDIS Quality and Safeguarding Framework. The RIS stated a review of the NDIS quality and safeguarding framework would commence in mid-2021 (three years after commencement), with a report to be provided Disability Ministers by mid-2022 (NDIS Quality and Safeguarding Regulation Impact Statement 2016, page 93).

However, as it is considered too early to conduct a comprehensive evaluation of the NDIS Quality and Safeguarding Framework (Framework) in 2021, just 12 months after the final jurisdiction (WA) began operating under the Framework, and with environmental uncertainties such as the Disability Royal Commission, it is proposed that the review of the Framework be undertaken in a two-stage approach: (i) a fit-for-purpose external review to be completed by mid-2022, aimed at making any necessary adjustments to the Framework considering the early implementation experience; and (ii) a comprehensive evaluation of the effectiveness of the Framework to be undertaken by mid-2025.

Mechanisms for the review of regulatory obligations need to be harmonised

Summary of suggested considerations

QPC may wish to consider the following issues further:

- There are already numerous mechanisms in place for reviewing legislative and regulatory arrangements. Excessive review processes can impose an impost on disability service providers, people with disability and disability stakeholders and a coordinated approach to review processes is critical to ensure they are efficient and effective and not overly burdensome.
- Both stages of the proposed upcoming review of the NDIS Quality and Safeguarding Framework will include extensive stakeholder consultation processes in relation to the existing and proposed regulatory requirements and obligations under the Framework, including those in relation to: complaints and serious incidents; worker screening; provider registration and Code of Conduct; and restrictive practices.

List of References

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