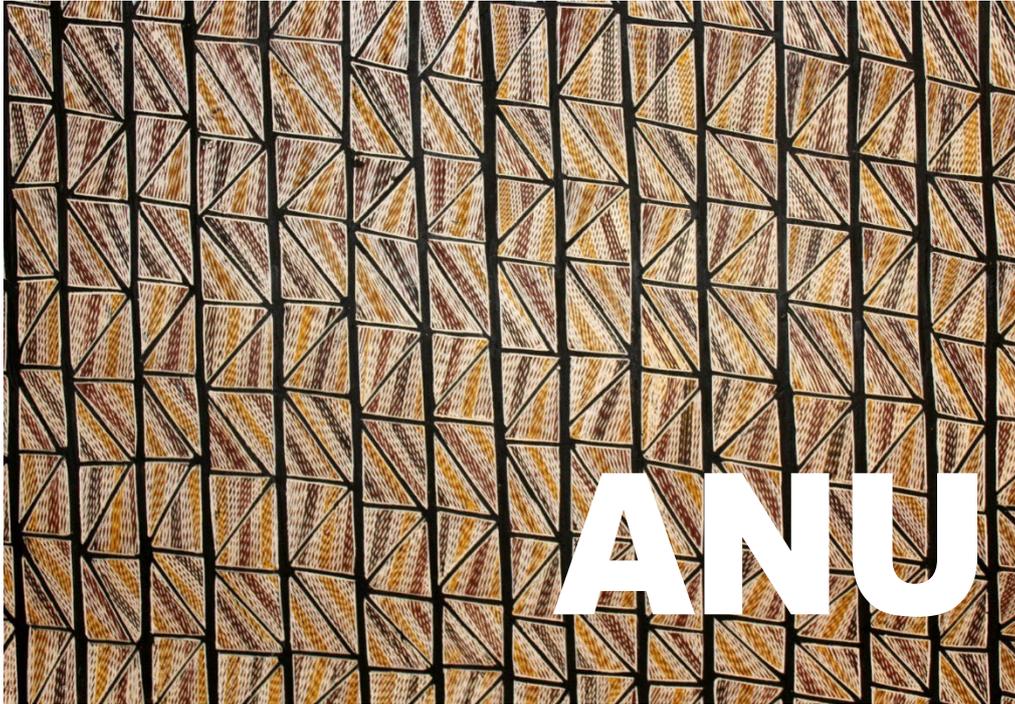




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CENTRE FOR INDIGENOUS POLICY  
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# Implementing disability policy reform: challenges and opportunities

M C DILLON

Centre for Indigenous Policy Research  
POLIS@ANU - The Centre for Social Policy Research  
Research School of Social Sciences  
College of Arts and Social Sciences  
+61 2 6125 0587  
polis.admin@anu.edu.au

The Australian National University  
Canberra ACT 2600 Australia  
[www.anu.edu.au](http://www.anu.edu.au)

TEQSA Provider ID: PRV12002 (Australian University)  
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Associate Professor William Fogarty  
Acting Director, CIPR  
POLIS: The Centre for Social Policy Research  
Research School of Social Sciences  
College of Arts & Social Sciences  
The Australian National University

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**Michael Dillon** is a Visiting Fellow at the Centre for Indigenous Policy Research (CIPR), Research School of Social Sciences, College of Arts & Social Sciences, Australian National University. Michael has worked for remote Aboriginal communities and at senior levels within the Australian and Northern Territory Governments in roles involving strong exposure to the Indigenous affairs policy domain.

# Implementing disability policy reform: Challenges and opportunities

M C Dillon

## Abstract

This paper assesses the risks and opportunities for Indigenous interests embedded in the recommendations of the recent independent review into the National Disability Insurance Scheme (NDIS). To provide essential context, the paper begins with an overview of the mainstream policy issues emerging from the NDIS Review, before addressing the distinct issues relevant to Indigenous interests. The proposed reforms create significant opportunities to remove the structural and system constraints inhibiting equitable access by Indigenous people to disability support by governments. However, each opportunity also entails risks, and the risks of policy failure are substantial. The paper argues that the NDIS Review's recommendations are both essential to the long-term sustainability of the NDIS, and in the public interest. Yet for Indigenous interests to grasp the opportunities and avoid the risks embedded in the Review's complex policy architecture and implementation processes, they will need to develop a comprehensive and proactive response focused on implementation of the proposed reform agenda, and engage in sustained advocacy across all jurisdictions in order to ensure the reform momentum is maintained.

## Acronyms

ABS	Australian Bureau of Statistics
CDP	Community Development Program
GST	Goods and Services Tax
IGA	Intergovernmental Agreement
NDIS	National Disability Insurance Scheme
NDS	National Disability Services

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## Introduction

Under the proactive management of the Hon. Bill Shorten, the Minister for the National Disability Insurance Scheme (NDIS), and the Minister for Social Services the Hon. Amanda Rishworth, the national disability policy agenda has been steadily accelerating over the past year.

In September 2023, the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, chaired by Ronald Sackville, published its *Final Report*.<sup>1</sup> Based on four and a half years work, and engagement with almost 10,000 people with direct or indirect experience of disability, the Royal Commission made 222 detailed and prescriptive recommendations spanning virtually the entire experience of disability in Australia. The Government welcomed the report and [announced](#) the establishment of a cross-agency task force operating over two years to develop and progressively roll out a holistic response<sup>2</sup> (Rishworth and Shorten 2023).

Less than three months later, on 7 December 2023, the independent [Review of the NDIS](#) (NDIS Review) co-chaired by Bruce Bonyhady and Lisa Paul was released (Department of Prime Minister and Cabinet 2023).

The NDIS Review made 26 high level recommendations fleshed out by 139 supporting actions. In short order, this was followed by the establishment of [a taskforce](#) to advise the Government on how to revise the current provider registration system,<sup>3</sup> the [announcement of \\$83 million](#) to the NDIS for ‘a number of fraud busting IT activities’,<sup>4</sup> an [announcement](#) of funding over two years to develop a foundational support strategy,<sup>5</sup> the establishment of a [National Disability Data Asset Council](#) to drive ways to make better use of participant data,<sup>6</sup> a [refreshed strategy](#) to support NDIS participants into employment<sup>7</sup> and a [crackdown on the overcharging](#) of NDIS participants by rogue providers.<sup>8</sup>

In early March, Commonwealth and state ministers [agreed](#) to publish their formal response to the Royal Commission by mid-2024.<sup>9</sup> The Commonwealth also [released a progress report](#) on actions taken in response to the *Final Report* of the Royal Commission pending the finalisation of the Commonwealth’s formal response.<sup>10</sup>

The May 2024 Budget delivered a further \$468.7 million, providing the funding required to implement many of the measures announced in the months leading into the Budget.<sup>11</sup> It also announced some \$250 million over five years from 2023–24 to reform employment services and supports for people with disability (Treasury 2024, BP2, p. 168; BP1, p. 29–30).

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<sup>1</sup> <https://disability.royalcommission.gov.au/publications/final-report>

<sup>2</sup> <https://ministers.dss.gov.au/media-releases/12656>

<sup>3</sup> <https://ministers.dss.gov.au/media-releases/13786>

<sup>4</sup> <https://ministers.dss.gov.au/media-releases/13871>

<sup>5</sup> <https://ministers.dss.gov.au/media-releases/13711>

<sup>6</sup> <https://ministers.dss.gov.au/media-releases/13876>

<sup>7</sup> <https://ministers.dss.gov.au/media-releases/14201>

<sup>8</sup> <https://ministers.dss.gov.au/media-releases/14236>

<sup>9</sup> <https://ministers.dss.gov.au/media-releases/14011>

<sup>10</sup> <https://ministers.dss.gov.au/media-releases/14111>

<sup>11</sup> <https://ministers.dss.gov.au/media-releases/14666>

At a macro level, the Budget Papers indicate the NDIS currently costs \$48.7 billion, rising to \$60.7 billion in 2027–28, an increase of \$12 billion (Treasury 2024, BP1, p. 211). Total disability costs which also include financial support for people with disability and for carers are currently \$80.4 billion and expected to grow to \$100.5 billion in 2027–28. The budget papers argue that the reforms introduced to date will moderate the increases in NDIS costs projected by the NDIS Actuary of \$14.4 billion. Nevertheless, the scheme is dealing with high demand and further reforms will be necessary. The substantive medium term policy issue to be resolved, an issue of national significance, is which segments of the community should pay for those reforms and how should they be designed and implemented.

## Mainstream policy challenges

The NDIS Review was the first major policy review of the NDIS since its establishing legislation was enacted in 2013. The Review’s comprehensive analysis represents an impressive achievement given the NDIS’s complex policy architecture, and its interconnections across multiple sectors and jurisdictions.

The complexity of the emerging policy challenges that led to the NDIS review is due in no small part to the initial design based on market-based service provision and the largely unforeseen but now significant withdrawal of prior support systems for disabled citizens by mainstream public sector institutions. Addressing these complex challenges was a key focus of the Review.

The NDIS Review’s recommendations and more detailed supporting actions represent a conceptually coherent and highly ambitious reform agenda. The Review panel suggested a five-year implementation process to ensure a smooth transition. On the Review website,<sup>12</sup> there are links to more detailed supporting analysis and commissioned studies, and a range of communications materials designed to ensure greater accessibility to the Review panel’s findings and recommendations.

Early reactions to the NDIS Review were largely positive – see for example two articles published in *The Conversation* (Bennett and Orban 2023; Brown et al. 2023). The article by Bennett and Orban (2023) includes an insightful quote from one commentator:

*The panel’s recommendations seem like a reasonable framework for change, but they aren’t a precise blueprint. The effect on people with disability, families, and support workers will depend on the detail and implementation. There are still many difficult conversations to have.*

In his [media release](#) welcoming the Review report,<sup>13</sup> Minister Shorten listed the key recommendations as being:

- **Legislation** to improve eligibility and access, as well as an early intervention pathway for children.
- **Foundational supports:** disability specific supports that would be available to people with disability and, where appropriate, their families and carers. These supports should be available to all Australians with disability, whether they are on the NDIS or not. Foundational supports would interconnect with existing mainstream services like childcare and schools and be complemented by early childhood intervention and new approaches to psychosocial disability and mental health.

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<sup>12</sup> <https://www.ndisreview.gov.au/>

<sup>13</sup> <https://ministers.dss.gov.au/media-releases/13416>

- **Service navigation:** the introduction of navigators to help people with disability find and access all services available to them across mainstream services, community supports, foundational supports and the NDIS.
- **Fairer housing and living support:** including more flexible and innovative approaches to housing supports to help people access solutions that suit them better.
- **Registration:** all providers should be registered, with the level of regulatory requirement determined by the risk and complexity of the supports they provide.

The Minister also noted that the National Cabinet (which includes the Commonwealth and the states and territories) had agreed to implement legislative changes to the NDIS to improve the experience of participants and restore the original intent of the Scheme to support people with permanent and significant disability, within a broader ecosystem of supports.

Implicit in this careful choice of words is a decision to shift responsibility for those with temporary or less significant disability from the NDIS to the ‘broader ecosystem of supports’, an ecosystem that has never been comprehensively defined and mapped. This ecosystem has been declining since the NDIS was established, as jurisdictions facing competing fiscal pressures responded by pushing all claims for disability care to the NDIS.<sup>14</sup>

The NDIS Review proposed a new national policy architecture for the NDIS built around a new Disability Intergovernmental Agreement which includes measurable commitments and targets for improving the accessibility and inclusivity of mainstream services and the range and level of foundational services, as well as mechanisms to ensure all Australian governments are accountable for the future success and sustainability of the NDIS. The Royal Commission made similar recommendations.

The National Cabinet website<sup>15</sup> lists disability reform as one of the key national priorities on which the relevant ministerial council reports directly to National Cabinet. The December 2023 National Cabinet [communiqué](#)<sup>16</sup> also indicates, inter alia, that as an initial response to the NDIS Review, National Cabinet members had agreed on new financial arrangements relating the NDIS. This involved a 50/50 cost sharing deal between the Commonwealth and the states for the funding of foundational supports aimed at constraining the growth of the cost of the NDIS beyond 2026 to 8 per cent per annum.<sup>17</sup> The Commonwealth also agreed to extend the Goods and Services Tax (GST) No Worse Off Guarantee in its current form for three years from 2027–28.<sup>18</sup>

While the costs of building the ‘ecosystem of supports’ agreed to by National Cabinet is shared between the Commonwealth and the states, assisted by the more generous GST arrangements agreed by the Commonwealth, the actual delivery of the ‘foundational supports’ envisaged is far from guaranteed by the revised financial arrangements (Canales 2024). The potential cost of that ‘ecosystem of supports’ (outside the NDIS) are substantial.<sup>19</sup> Notwithstanding their December 2023 agreement, the commitment of the states and territories to fully fund foundational supports is clearly in doubt as they are already raising further concerns. In March, the Guardian [reported](#)

<sup>14</sup> Biddle et al. (2014, ch.5) lists the major mainstream support programs in existence in each jurisdiction when the NDIS was established.

<sup>15</sup> [https://federation.gov.au/sites/default/files/2023-06/federal-relations-architecture\\_0.pdf](https://federation.gov.au/sites/default/files/2023-06/federal-relations-architecture_0.pdf)

<sup>16</sup> <https://www.pm.gov.au/media/meeting-national-cabinet-federation-working-australia>

<sup>17</sup> *The Australian*, commenting on the 2024 Budget outcomes, reports that the NDIS is currently growing at 9.2 per cent per annum (Lunn 2024).

<sup>18</sup> Media reports (e.g. Chambers 2023; Cowan and Carling 2023) suggest that the agreement was contingent on the Commonwealth agreeing to extend the GST No Worse Off Guarantee in its current form for three years from 2027–28, a decision taken at the same meeting of National Cabinet.

<sup>19</sup> It was reported that the chair of the Actuaries Institute’s Public Policy Council Committee estimated that these additional costs would amount to \$25 billion over five years (Canales and Convery 2023).

that state and territory premiers and chief ministers wrote to the Commonwealth seeking further consultation prior to the introduction of legislation and expressing concern at the potential implications of prospective changes to the NDIS (Canales 2024).

What is clear is that the policy architecture and governance of the wider disability system is thus crucial to the sustainability and viability of the NDIS. Accordingly, any redesign of that policy architecture, if it is to be effective, must include explicit provision for oversight of the adequacy and quality of the provision of the 'ecosystem of supports' by state and territory governments.

In late March, Minister Shorten tabled the National Disability Insurance Scheme (Getting the NDIS Back on Track No.1) Bill 2024. The Bill, which represents the first tranche in a larger reform project, focuses on 'access, plans and budget settings, and quality and safety' for participants. Getting the NDIS back on track is intended to convey that the NDIS is, in the Minister's words, 'more about people and less about bureaucracy through greater equity, transparency and consistency'.<sup>20</sup> However, it may also be code for narrowing the focus of the NDIS scheme's remit.

Coincidentally, the release of the NDIS Review was immediately followed by National Disability Services (NDS 2023a) *State of the Disability Sector Report 2023*. NDS is Australia's peak body for disability service organisations, representing more than 1000 service providers. Based on a survey of 432 disability service providers, the report points to serious financial pressures facing providers nationally, with over half either making a loss or just breaking even in the last financial year. It also identifies workforce issues as a major constraint on service provision. According to the NDS website:

*Seventy-eight per cent of respondents reported moderate to extreme difficulty in finding disability support workers, while the availability of allied health professionals ranged from low to non-existent — with the crisis biting hardest in regional and remote areas (NDS 2023b).*

Clearly, the strains identified by the NDIS Review extend to both participants and providers. These strains are evident across the mainstream NDIS, but Indigenous participants and providers are not immune.

How then should we interpret this (continuing) torrent of policy activity?

Clearly, the recommendations of both the Royal Commission and the NDIS Review present an extraordinary opportunity for the nation to consolidate and strengthen the pathbreaking institutional reforms across the disability sector over the last decade. With over 1 in 6 Australians living with some form of disability, and 1 in 20 living with a profound disability, virtually every extended family in the nation will have a stake in seeing this potential realised.<sup>21</sup> Yet the financial and policy challenges are enormous.

The Royal Commission and the NDIS Review have laid down a broad road map, but the actual pathways to be taken will involve myriad decisions over at least five years and perhaps longer. To determine those pathways, the Commonwealth minister and his state and territory colleagues will have to negotiate an ongoing series of complex and financially significant policy decisions. The exigencies involved in managing electoral cycles in nine jurisdictions, the ever-present tensions inherent in our system of fiscal federalism, and the inevitability of competing fiscal priorities

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<sup>20</sup> <https://ministers.dss.gov.au/media-releases/13416>. As of July 2024, the Bill has yet to pass the Senate.

<sup>21</sup> In 2018, some 4.4 million Australians, or 17.7 per cent of the population, lived with a disability, with prevalence increasing with age. Of these, almost one-third (1.4 million Australians) or 5.7 per cent of the population live with a profound or serious disability (Australian Bureau of Statistics [ABS] 2019). As at December 2023, just over 646,000 Australians accessed the NDIS (<https://www.ndis.gov.au/understanding/ndis-each-state>).

within each of the nation's governing jurisdictions means that politics within and between jurisdictions will always be front and centre.

Additionally, the sheer complexity of the policy architecture that has been created to administer this sector means that achieving consensus across multiple interests and jurisdictions for the design of necessary reforms is exceedingly difficult, and the implementation of whichever reform paths are chosen extraordinarily challenging. While the NDIS Review and to a lesser extent the Royal Commission have succeeded in shaping and articulating the policy design challenge, the implementation challenge still appears beyond reach, with myriad new processes in play each taking several years to be finalised. Clearly governments are already grappling with this reality. Given these constraints, the risk – and temptation – for the nation's political class is to play safe, advance slowly and kick the hard decisions down the road. The consequences will be well-intentioned failure. The nation's [failed housing system](#) (Ong ViforJ 2024) provides a graphic depiction of what may well be in store for the disability policy sector in the absence of successful, innovative and visionary policy reform.

To provide just one minor example of the bureaucratic and policy congestion that is emerging, in his media release announcing the tabling of the NDIS Amendment Bill, Minister Shorten noted that many improvements embedded within the legislation are contingent upon updated NDIS rules which are made with the states and territories, and new or updated legislative instruments. The Minister indicated in his release that he proposed to engage in a codesign process with the disability community to design and update these changes.

A more substantive set of challenges can be identified in the NDIS Review's call for the delivery of a diverse and innovative range of inclusive housing and living supports. The Royal Commission also proposed a similar approach. However, against the backdrop of a national housing crisis, such a reform initiative would necessitate a co-ordinated and comprehensive national initiative requiring political determination to ensure it is adequately resourced. Nevertheless, the design complexity, cross-jurisdictional responsibilities, the inevitable substantial financial costs involved, and the comparatively weak advocacy base for disability housing suggests that the adoption of piecemeal approaches is more likely than the implementation of a national initiative.

Similar challenges will arise in each of the myriad sub-sectors within the disability sector, including the crucial sectors of education and employment. There is a very real risk that the overarching disability reform process will implode under its own weight.

For Indigenous interests, and in particular Indigenous citizens living with disability, the mainstream institutional framework governing disability policy continues to have salience for two reasons. First, there is no comprehensive Indigenous specific disability policy sector, and Indigenous citizens living with disability will thus continue to rely upon mainstream services, and in many cases, may prefer to access mainstream services. Second, the mainstream frameworks are important, because they serve as the institutional foundation for whatever Indigenous specific framework modifications are decided upon by governments. To the extent that the implementation of reforms relating to the mainstream policy architecture are flawed or delayed, this will have run-on implications for Indigenous specific reform to the disability policy domain architecture. Somewhat ominously, it is clear that both these factors have been salient features of the policy architecture for the national project of Closing the Gap, which after almost 16 years has failed to gain traction and have a discernible impact (Dillon 2021a, 2024).

To sum up, in relation to mainstream policy options, the sheer complexity of the current NDIS scheme, the associated gaps in the broader foundational support ecosystem in the states, the complexity and longevity of the proposed reform agenda, and the substantial financial investments required suggests that its implementation will be a major challenge for the Commonwealth bureaucracy, and the states and territories will likely find it even harder. While the NDIS Review panel presciently recommended the adoption of various oversight mechanisms, these are functional in nature rather than overarching, and are designed to operate within existing institutional structures. Yet for the reasons outlined above, the current institutional

framework is unlikely to deliver effective reform. If the reform agenda fails, the risk is that a future government will resort to arbitrary and across-the-board cuts to NDIS benefits, in effect ensuring that it is disability interests who pay for the nation's failure to deliver a sustainable NDIS.

What will be required are new institutional arrangements beyond the existing bureaucratic frameworks, independent, at arm's length from short term political machinations, focused primarily on the public interest, and operating within parameters that are set by parliaments and endorsed by the National Cabinet. In turn, more innovative structures require innovative implementation strategies. This paper does not attempt to outline the design of the more innovative implementation strategies required for the mainstream reforms to succeed, except to emphasise that the necessary implementation strategies cannot be driven from within existing institutional structures.

## What does the NDIS Review recommend in relation to Indigenous citizens living with disabilities?

The following analysis is premised on an assumption that the Commonwealth and National Cabinet will agree to implement the substance if not the detail of the NDIS Review panel's recommendations on reforming and restructuring the NDIS. The NDIS faces significant financial challenges and a failure to pursue a significant reform agenda would merely defer a day of existential reckoning. Nevertheless, there is considerable design complexity in the NDIS and thus an ever-present risk that unanticipated feedback loops in the mainstream policy architecture will lead to major problems. Despite the importance of the mainstream design architecture to outcomes for Indigenous participants, and the concomitant implication that if the mainstream reform agenda fails, it will impact Indigenous interests disproportionately, the analysis here does not attempt to assess or predict the risks or likelihood of mainstream design failure.

In its Acknowledgment of Country on its first page, the NDIS Review raises explicitly and implicitly some of the challenges that arise in providing support for Indigenous participants or potential participants:

*... First Nations people experience disability at up to twice the rate of non-Indigenous Australians. Historically discriminatory policies continue to affect the safety and accessibility of supports and services. We recognise that 'disability' is a western concept that does not readily translate into First Nations communities and languages. We acknowledge that, in order to access supports, First Nations people have been required to label themselves as a 'person with disability' or as 'other'. This is at odds with the fundamental First Nations cultural value of inclusion... (Department of the Prime Minister and Cabinet 2023, p. 1).*

The demographic, socioeconomic and cultural heterogeneity of Indigenous Australians raises complex challenges for the effective delivery of disability services that are superimposed on the inherent complexity of the scheme's architecture for mainstream Australians.<sup>22</sup>

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<sup>22</sup> Biddle et al. (2014) demonstrates that the issues related to delivering disability services to Indigenous Australians were recognised and acknowledged from the start. The fact that so little policy traction has been achieved in relation to Indigenous access issues over the first decade of the NDIS suggests that there are structural impediments in play that will make obtaining policy traction into the future similarly difficult.

To facilitate a more focused discussion, I set out below a selection of (re-ordered) extracts from the NDIS Review report that refer to the key recommendations and actions that will impact Indigenous participants. The use of bold font in the extracts below is an addition by this author to emphasise key elements for present purposes.

After identifying the statistical challenges facing mainstream people with disability in areas such as health, education, employment and social connection, the NDIS Review presents (at p. 236) the following statistical snapshot of the impact of disability on Indigenous citizens:

*In addition, rates of disability for First Nations people are higher than the general population.*

*- One in five (72,700) First Nations children aged under 18 have disability, compared with one in 12 children in the general population.*

*- Approximately 35 per cent (274,400) of First Nations people under 65 years of age have disability, three times higher than the general population.*

*- Around 202,200 First Nations adults between 18 and 64 have disability representing 45 per cent of all First Nations adults. This increases to 79 per cent or nearly four out of five First Nations adults aged over 65.*

*Despite this reality, and the commitments under the UNDRIP and the National Agreement on Closing the Gap, First Nation issues are not appropriately prioritised through current disability governance arrangements.*

*For First Nations people with disability, this represents a critical gap in a commitment by all Australian governments under the National Agreement on Closing the Gap. Not enough has been done to identify, develop or strengthen independent accountability mechanisms that work with government to identify and eliminate racism, embed and practice meaningful cultural safety, monitor progress, listen and respond to concerns about mainstream institutions and agencies, and report publicly on transformation.<sup>23</sup>*

The Review also makes a related point, by quoting approvingly an extract from the submission of the Australian Human Rights Commission:

*[First Nations] peoples are more likely to experience disability but **are less likely to access support services** than other Australians. This demonstrates a fundamental problem with the accessibility of disability support services for [First Nations] peoples (Department of the Prime Minister and Cabinet 2023, p. 237).*

The Review has proposed a new national policy architecture for the NDIS. The central plank of this dealing with mainstream funding responsibilities is laid out in **Recommendation 20** (see p. 244):

### **Create a new compact between Australian governments**

**Action 20.1** *National Cabinet should agree a new Disability Intergovernmental Agreement to underpin delivery of a comprehensive and unified disability support ecosystem. This Intergovernmental Agreement (IGA) should build on the foundation of Australia's Disability Strategy and confirm the commitment of all governments to the United Nations' Convention on the Rights of People with Disability. It should include measurable commitments and targets for improving the accessibility and inclusivity of mainstream services and the range and level of foundational services (see Recommendations 1 and 2), as well as ensuring Australian governments are accountable for the future success and sustainability of the NDIS (see Action 21.1). It should have the practical effect of **guaranteeing support to all***

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<sup>23</sup> This statistical snapshot is broadly consistent with the snapshot that applied in 2013 when the NDIS was established; see Biddle et al. (2014).

**people with disability – not just those in receipt of NDIS-funded supports.** Progress in meeting commitments should be independently assessed by **a new Disability Outcomes Council** (see Action 20.5). This should complement the role for the Productivity Commission in overseeing priority IGAs, such as progress under Closing the Gap.

However, in addition to the mainstream focus, the NDIS Review recommends (see p. 245) specific provisions be incorporated dealing with First Nations disability issues:

**Action 20.4** National Cabinet should develop **a dedicated First Nations Schedule** under the new Disability Intergovernmental Agreement to embed **a First Nations Disability Forum** and **an independent sector-specific accountability mechanism**. This will fill accountability gaps and deliver on disability sector strengthening efforts and Priority Reforms under the National Agreement on Closing the Gap. The Schedule should be created in partnership with the relevant First Nations stakeholders and led by the First Nations Disability Representative Organisation. The Schedule should establish and appropriately resource a First Nations Disability decision-making forum that adheres to the Strong Partnership Elements (Clause 32) of the National Agreement on Closing the Gap. The forum should drive community-led design, implementation and evaluation. The Schedule should also establish and appropriately resource **an independent, sector-specific accountability mechanism, that aligns with approaches taken across the care and support sector, such as a First Nations Disability Commissioner** to support, monitor and report on mainstream agencies and institutions' ability to identify and eliminate racial ableism and embed and practice meaningful cultural safety across a unified disability ecosystem.

Complementing this proposed Intergovernmental Agreement and its associated Indigenous schedule, the Review has recommended (p. 78) the development of a new policy framework:

**Action 2.10:** The Australian Government should develop **a national strategy to improve the quality of the disability ecosystem for First Nations people with disability**. Designed and implemented in partnership with **a new First Nations Disability Forum** (see Action 20.4), the national strategy will address persistent gaps in the investment, coordination and development of culturally accessible and safe services for First Nations people with disability. It would also facilitate performance monitoring for First Nations people with disability against all Australia's Disability Strategy and the National Agreement on Closing the Gap (Targets and Priority Reforms). The national strategy should be supported by **a First Nations Disability Investment Fund** that prioritises the implementation of actions already identified by the Disability Sector Strengthening Plan and the forthcoming National Disability Insurance Agency First Nations Strategy.

The proposed strategy is designed to flesh out the arrangements applicable to making operational the new services delivery arrangements proposed by the NDIS Review (see pp. 186–190) for First Nations participants across the nation. In a section headed 'Access to supports for First Nations communities and all participants in remote communities', the Review proposed:

**Recommendation 14:** Improve access to supports for First Nations participants **across Australia** and for all participants in **remote communities** through **alternative commissioning arrangements...**

**Action 14.1:** The National Disability Insurance Agency, in partnership with First Nations representatives, communities, participants and relevant government agencies should progressively roll-out alternative commissioning arrangements for both First Nations communities and remote communities, starting as soon as possible.

The Review highlighted the specific challenges of relying on market-based provision of support services in remote areas, and effectively gave its imprimatur for the proposed alternative

commissioning arrangements to move away from this model.<sup>24</sup> For example, the NDIS Review included (at p. 179) a quote from a submission to a previous review of the NDIS Act (Tune 2019, p. 122):

*The key issues with the NDIS in my experience is that regional areas are poorly serviced by a market-based approach, especially when services are specialised. It does not matter if you have the funds if nobody will provide the service.*

To make doubly sure that no participant, whether mainstream or Indigenous, fell through a market failure gap, the Review proposed (at p. 185):

**Action 13.4** *All Australian governments through the Disability Reform Ministerial Council should agree and publish a provider of last resort policy to ensure participants have continued access to supports where markets fail.*

Given the terms of Recommendation 14 proposing alternative commissioning arrangements for Indigenous participants (at least in some contexts), the provider of last resort policies in each jurisdiction will need to address the consequences of any alternative commissioning arrangements operating in each jurisdiction.

## Assessment

This section discusses both opportunities and risks. In many respects, this is an artificial distinction as these are invariably mirror concepts: risks can often be conceptualised as the failure to grasp opportunities, while opportunities can be conceptualised as involving the identification and avoidance of risks that constrain the implementation of effective reform. Nevertheless, I have attempted to identify separately both the opportunities and risks for Indigenous interests arising from the proposed reforms to the NDIS policy architecture.

At the highest level, the NDIS reform process represents a tremendous opportunity for Indigenous interests. Yet there are extremely significant implementation risks arising from the complexity of the scheme's mainstream architecture, and the necessity for key elements to be legislated. A particular complication and risk for First Nations participants will be the interplay of mainstream design elements with the Indigenous specific design elements. These risks are amplified within the proposed additional (not separate) layer of Indigenous policy architecture, which will inevitably be complex in both its design and implementation.

**The access opportunity.** The NDIS Review panel have focused considerable effort and attention on ensuring their recommendations encompass the needs of First Nations participants. Clearly the major opportunity implicit in the Review's recommendations is the identification of a potential pathway forward which would allow First Nations potential participants who have been or would likely be excluded from full access to the NDIS under its present design parameters to gain access to disability services in the future. This is hugely significant and the major high-level opportunity for Indigenous interests. To ensure this opportunity retains continuing focus and attention, the new policy architecture for the NDIS could include provision for an independent entity to both estimate potential take-up by Indigenous participants and measure on a regular

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<sup>24</sup> In this respect, the NDIS Review is following in the footsteps of the ANU authors' 2014 advice that 'The nature of Indigenous disability is likely to require some specific approaches and strategies. In addition, it is likely that a tailored approach will be necessary in remote communities and perhaps to some extent in regional communities.' (Biddle et al. 2014, pp. 119–20). See also the detailed discussion of what it intended by the proposals for alternative commissioning arrangements in the Review's Supporting Analysis document at pp. 824–847, available at <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis-supporting-analysis>

basis ongoing actual take-up. As governments have a record of resisting this level of transparency, Indigenous advocates would be wise to make it a priority in their log of claims.

**The codesign opportunity.** The Review has identified multiple opportunities for Indigenous interests to codesign aspects of the new policy architecture. This is a significant breakthrough in the disability policy space and thus is an opportunity that should be grasped. This opportunity raises several strategic issues for Indigenous interests. The complexity of the policy architecture, and the multiple competing interests potentially in play (some very powerful) suggests that the development of a coherent and robust Indigenous policy agenda in relation to the details of the proposed model will be important. This will not be an easy process, as it must simultaneously span heterogeneous Indigenous views and perspectives, and the complexity of the policy architecture being designed. The window of opportunity is limited as the reality is that Indigenous interests' policy influence and leverage will likely wane over time as the mainstream parameters of the reform agenda are settled, and the NDIS subsides into political and hence policy quiescence. Indigenous interests will maximise their influence if they develop and implement a proactive codesign strategy independent of the artificial timelines/timeframes that governments will seek to adopt.

Commitments to 'co-design' policy by governments do not mean that governments will not seek to aggressively pursue specific agendas (influenced by other interests) and nor does it mean that governments will not seek to influence and co-opt key organisations, negotiators and leaders (Dillon 2021b). Moreover, in a context where much of the codesign will be undertaken jurisdiction by jurisdiction, negotiation outcomes in one jurisdiction will flow through to others. A proactive and well formulated strategy by First Nation advocates would minimise the likelihood of these tactics emerging or being successful.

**The foundational supports risk.** The Review panel proposal for increased provision of foundational supports external to NDIS supports is a crucial reform aimed at ensuring the financial sustainability and viability of the NDIS into the future. Paradoxically, it also represents perhaps the most substantial risk to Indigenous interests. This is a core recommendation of the Review and is designed to stem the increasing financial and demand pressure on the NDIS. The retreat from the provision of 'bread and butter' support for disabled clients in mainstream service provision over the past decade will be extraordinarily difficult to reverse and will not occur except through sustained advocacy pressure at both Commonwealth and state/territory levels.

A major and longstanding challenge for Indigenous citizens is to obtain equitable and inclusive access to mainstream services. Priority Reform Three in the National Agreement on Closing the Gap is designed to improve the inclusivity of mainstream agencies and services, but it is far from clear that this reform agenda has gained appropriate traction across nine jurisdictions. Clearly, in circumstances where mainstream services are not inclusive or equitably provided, the addition of foundational supports to those services will not flow through to Indigenous service consumers. The implementation of the NDIS Review recommendation on foundation supports will necessarily throw more responsibility on governments to demonstrate that mainstream services underpinning foundational supports are inclusive of Indigenous citizens.

**The disability housing opportunity and risk.** The NDIS Review's strong emphasis on the importance of housing to effectively meet the needs of the disabled community represents a very significant opportunity for Indigenous interests. Recommendation 9 of the *Final Report*, and the 11 associated actions, call for the delivery of a diverse and innovative range of inclusive housing and living supports (see Department of the Prime Minister and Cabinet 2023, pp. 146–155). The Review panel have laid out a sophisticated and comprehensive mainstream housing policy agenda for governments that will take considerable bureaucratic effort and skill to implement and require determined political backing to ensure it is adequately resourced. It is a worthwhile agenda based on clear-sighted policy analysis. It is reinforced by academic commentary that notes the importance of housing in underpinning effective disability support (Winkler 2023). Nevertheless, the design complexity, cross-jurisdictional responsibilities, the inevitable financial costs involved,

and the weak advocacy base for disability housing make the successful achievement of this mainstream housing agenda within five years far from certain.

What is missing from the Review panel's analysis of housing is an appreciation of how their analysis translates into the First Nations policy space, and particularly the housing conditions in remote communities. Remote Indigenous housing provision is characterised by a significant shortage of privately-owned dwellings due to tenure and finance issues, and substantial housing under-supply, poor housing management governance, and chronic overcrowding. The challenges of remote Indigenous housing provision are not currently being adequately addressed (Grealy et al. 2023; Habibis et al. 2019; Kimberley Development Commission 2023), with the result that the problems identified above are likely to remain endemic for at least the next five years.<sup>25</sup> In these circumstances, it is difficult to envisage how to superimpose an effective Indigenous housing disability strategy in remote communities. Given this situation, there is a strong case for separate direct provision of innovative remote community disability housing by the Commonwealth in partnership with local housing and disability providers. The Commonwealth is unlikely to respond in the absence of sustained advocacy and policy pressure by First Nations advocates.

**The workforce opportunity.** The Review panel identified the need for improvements to the mainstream disability care workforce which is clearly labouring under considerable strain and pressure. Given the over-representation of First Nations citizens across the disability sector, these challenges will have greater salience for Indigenous interests. The conjunction of proposed alternative commissioning arrangements (which are likely to lead to greater involvement of Indigenous community-controlled providers), extraordinarily high unemployment levels amongst Indigenous citizens, and the multiple workforce challenges facing the disability sector suggests there will be significant opportunities for Indigenous jobseekers prepared to work in the disability sector.

Indigenous citizens are, as a proportion of the working-age population, over-represented amongst unemployed Australians. According to the Closing the Gap dashboard, Indigenous employment levels nationally for people aged 25–65 in 2021 was 55.7 per cent, up from 51 per cent in 2016. The equivalent 2021 figure for mainstream citizens is 77.7 per cent. In remote regions, Indigenous employment levels are much lower.<sup>26</sup> There is clearly scope for increased employment of disability carers within the NDIS and 'ecosystem supports' sectors. Increased employment in the services sector, particularly in regional and remote communities has substantial potential to contribute to better disability services, strengthened community resilience and more sustainable economic activity beyond the disability sector.<sup>27</sup>

A failure to underpin the new NDIS policy architecture with significant investment in expanding the disability care workforce in Indigenous contexts (as implicitly recommended by the NDIS Review panel – see Recommendations 14 and 15 and associated actions) will not merely be a lost opportunity but will guarantee continuing Indigenous exclusion and policy failure. The inherent heterogeneity of Indigenous communities across the nation means that there will not be a single model that will fit all circumstances. Again, this is both a challenge and an opportunity.

Even with substantial workforce investments, there are significant risks related to the need to utilise stable and professional workforce platforms to engage, employ and continuously train and

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<sup>25</sup> The Commonwealth recently announced major funding investments for remote housing in the Northern Territory (Albanese 2024). While welcome, it will not meet all outstanding need in the Northern Territory and does not address outstanding need in other jurisdictions. See the Appendix in the Economic Inclusion Advisory Committee's 2024 report to government (Macklin 2024).

<sup>26</sup> See Target 8, Productivity Commission dashboard: <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area8>

<sup>27</sup> This point was identified by Biddle et al. (2014, p. 125), but clearly failed to gain adequate traction.

support disability care workers working with Indigenous participants. Ideally, these disability carers should be Indigenous and employed in contexts where they are professionally supported. The Review panel summarised its vision in relation to workforce issues as finding ‘new ways to attract, keep and train workers across the care and support sector to ensure a capable and sufficient disability workforce’ (Department of the Prime Minister and Cabinet 2023, p. 195). A decade ago, ANU researchers (Biddle et al. 2014: 125) identified the opportunity to build a remote disability workforce on the foundation of the existing community-controlled health infrastructure across remote and regional Australia. This opportunity was not taken up, and should be seriously considered in the development of the proposed alternative commissioning arrangements, perhaps even in urban contexts where community controlled medical services are operating.

An additional innovative approach not tried before, but worth considering, would be for the Commonwealth to create a national Indigenous disability care service (perhaps within an existing agency such as Aboriginal Hostels Limited) with standardised employment conditions and training which might engage and then second workers at cost (or perhaps at a discount) to community-controlled organisations which might otherwise struggle to attract and retain qualified staff. The Review panel’s observation (Department of the Prime Minister and Cabinet 2023, p. 195) that in remote communities there are also opportunities to leverage off changes to other government programs, such as the Community Development Program (CDP) is a rare misstep by the Review panel and betrays a misunderstanding of the glacial pace of remote welfare policy reform, and the significant flaws embedded within the CDP’s policy architecture, not least its underlying punitive or coercive frames of reference.<sup>28</sup>

**The informed choice risk** arises from the challenges inherent in designing Indigenous specific service delivery elements that must engage and interact seamlessly with the mainstream scheme. These are unequivocally opportunities but come with complex and potentially debilitating implementation risks. One obvious design issue to be addressed is how to maximise informed choice in access to alternative modes of service provision, and how to ensure that time consuming and expensive forum shopping does not emerge at the margins where negative decisions must be made and sustained. These design issues are potentially administratively complex and will take time to devise and to fine-tune. In the meantime, Indigenous applicants seeking access to the NDIS will likely feel frustrated and let down. It is crucial that the scheme retains the trust of its participants, and this is particularly the case with its Indigenous participants, so it will be very important that key Indigenous disability advocacy groups work hard to be on the front foot in ensuring that governments provide early solutions to these potential issues. In addition, it is in the public interest that Indigenous advocacy is adequately resourced by governments. The Commonwealth should take the lead on this.

**The disability investment fund opportunity and risk.** In action 2.10, the Review panel recommended the establishment of a First Nations Disability Investment Fund to facilitate actions under the Disability Sector Strengthening Plan and the forthcoming National Disability Insurance Agency First Nations Strategy. The Review did not recommend that this be codesigned, but I suggest that it should be. I also suggest that Indigenous codesigners might seek to design a fund with a guaranteed and indexed allocation from governments – an allocation proportionately linked to the gap between Indigenous need and access to the NDIS; and a joint government/ Indigenous governance arrangement which includes joint decision-making over funding decisions from the fund. I set out this potential approach to point to the opportunities embedded within the recommendation. Unfortunately, governments generally seek to maintain their absolute monopoly on determining funding allocations, and resist governance arrangements beyond ministerial control. The risk then would be that the fund becomes – if it is established – a mechanism for

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<sup>28</sup> It is worth noting that Biddle et al. (2014, p. 118) made a similar argument in relation to the Remote Jobs and Communities Program, the forerunner of the CDP. Nothing came of that suggestion. The Prime Minister’s recent announcements in relation to the CDP confirm that it is considered to be a failure but are unambitious and do not amount to adequate reform (Dillon 2024).

governments to allocate sub-optimal levels of funding while characterising funding grants from the fund as evidence that they are addressing the needs of disabled Indigenous citizens.

## Conclusion

The implementation of the NDIS Review recommendations relating to Indigenous access to the NDIS scheme represents a once-in-a-generation opportunity to address the systemic and structural constraints that have led to longstanding Indigenous exclusion from equitable access to disability support across the nation.

The Review panel recommendations have been framed as supplements to the pre-existing policy framework established by the National Agreement on Closing the Gap, and particularly the Priority Reforms agreed under that pathbreaking agreement. This is a solid basis for policy reform given that all Australian jurisdictions have already committed to the implementation of these principles and reforms. Along with a renewed focus on the access limitations of the existing NDIS for Indigenous people, the Review panel's adoption of the Closing the Gap framework, especially the reliance on the Priority Reforms, to underpin their recommendations represents a major opportunity for Indigenous interests advocating for a better deal for disabled Indigenous citizens.

Unfortunately, the implementation of the National Agreement on Closing the Gap has itself been problematic (Productivity Commission 2023)<sup>29</sup> and in turn this suggests that, in relation to the NDIS Review, there may well be a gap between the formal response of governments to the review and the effective operation and implementation of those reforms. As mentioned above, the sheer complexity of the current NDIS scheme, and the proposed reform agenda, suggests that its implementation will be a major challenge for the Commonwealth bureaucracy, and the states and territories will likely find it even harder. The NDIS Review panel presciently recommended the adoption of various oversight mechanisms, both in relation to the mainstream reforms and the Indigenous specific reforms.

Both at this macro level, and at the more micro level of individual recommendations and action plans, the tension between opportunities and risks is very real. This tension represents a challenge that can only be resolved with sustained and well-informed advocacy and will require Indigenous advocacy interests to devote considerable resources (expertise, financial) to staying engaged and informed across a wide and complex policy domain.

If it is serious about the mainstream reform agenda, the Commonwealth should consider establishing new temporary institutional arrangements with the authority and singular focus necessary to drive the reforms agreed by National Cabinet arising from the NDIS Review. To the extent that the reforms are designed to rein in the potential for significant NDIS cost blowouts, the sooner they are implemented the sooner they will begin to gain traction. Crucial to the required reform agenda is ensuring that the states and territories pick up the foundational supports that they have walked away from over the past decade. The Commonwealth will need to proactively drive the implementation of the disability reform agenda nationally if it wishes its chosen reform agenda to succeed. If the states fail to implement their commitments effectively, the losers will be the disability community. It is thus imperative that the Commonwealth assumes a leadership role in driving reform implementation.

Finally, in relation to the implementation of the proposed Indigenous reforms identified by the NDIS Review and bearing in mind the comments above on the necessity to step outside extant institutional framework to drive the mainstream reform agenda, business as usual will not be

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<sup>29</sup> For an even more robust critique, see my submission to the Commission following the publication of the Draft Report (Dillon 2023).

adequate. One option would be for the Commonwealth to establish a temporary agency or unit with a finite lifespan of say five years, staffed jointly by the Department of Prime Minister and Cabinet, the National Indigenous Australians Agency, the Department of Social Security, and secondees nominated by the Coalition of Peaks. There would be merit in committing to maximum transparency in its operations to build trust across the bureaucracy, the states and the Indigenous sector. There would also be merit in considering the appointment of an independent person with deep experience in both Indigenous policy and disability issues to lead it, as well as the appointment of a small expert Advisory Committee to offer advice and assistance. In the absence of a well resourced and staffed organisation with a dedicated remit to grasp the policy opportunities implicit in the new disability policy architecture, the potential for policy failure will inevitably drift into the realm of reality – a reality that will disadvantage the life opportunities of tens of thousands of First Nations citizens, and ultimately the nation’s credibility and reputation as an inclusive and just society.

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