

FEATURE

THE NDIS: IMPACTS FOR INSURERS

The National Disability Insurance Scheme (NDIS) was launched across six trial sites in July 2013 – two years after the Productivity Commission recommended its introduction. What does the implementation of this scheme mean for insurers? It seems they will be affected by the NDIS both directly and indirectly. Samantha Fuller and Jonathan Cohen explore the background and structure of the NDIS before examining the potential impacts on insurers.





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FIG 1. Location and coverage of NDIS pilot sites around Australia

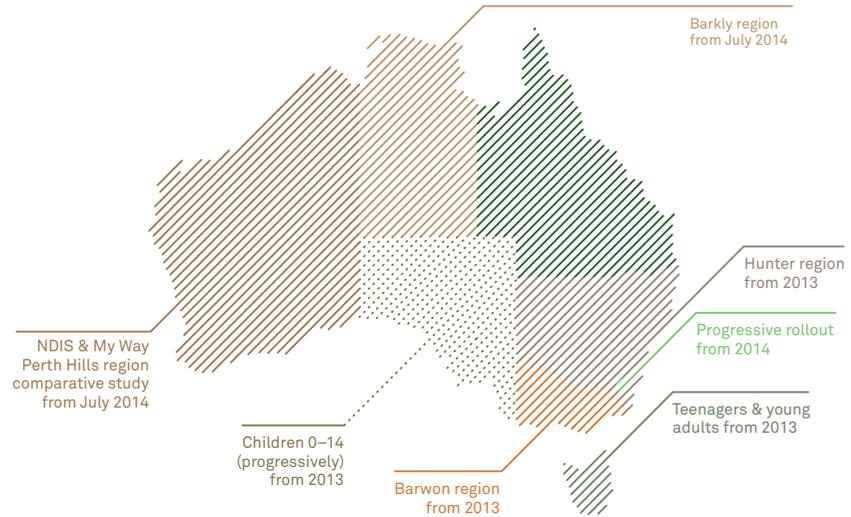


FIG 2. Anticipated dates for full NDIS rollout

State/Territory	Anticipated completion dates for full rollout
ACT	July 2016
NSW, SA	July 2018
Vic, Qld, NT, Tas	July 2019
WA	Contingent on outcome of trials

INTRODUCTION

It is currently anticipated that the National Disability Insurance Scheme (NDIS) will be implemented through most of Australia by 2019, providing cover for the reasonable and necessary care and support for severely and profoundly disabled Australians. Insurers will be affected by the NDIS both directly and indirectly: directly, through compensation recovery provisions; indirectly, through cost pressures resulting from a rapid increase in demand for carers, aids and appliances.

The NDIS has received bipartisan support at all levels of government for its recommendations to address what the Productivity Commission described as an underfunded, unfair, fragmented and inefficient disability support system. At its core, the scheme will do away with block funding of disability services in favour of individualised supports under the choice and control of the scheme participants. This is a radical shift for individuals with disabilities and their carers but also for the disability sector itself, which will need to adapt to a completely new business operating environment.

Funding for the NDIS will be partially offset by a reduction or removal of existing programs that will be superseded by the scheme. The remainder of the funding will come from a mix of federal and state funds, including through a 0.5 per cent addition to the Medicare levy.

This article explores the background and structure of the NDIS before examining the potential impacts of the NDIS for insurers.

NDIS: AN OVERVIEW

When will the NDIS roll out?

Figure 1 shows the location and coverage of the pilot sites. Figure 2 indicates the anticipated dates for full scheme rollout.

If the goal of full national coverage by 2019 is achieved, it is expected that the scheme will provide direct assistance to around 460,000 people with significant and permanent disability.

How does the NDIS work?

The NDIS will be administered by the National Disability Insurance Agency (NDIA). Figure 3 shows interactions between various scheme stakeholders.

The NDIS operates under a three tier legislative framework, as follows:

- The *NDIS Act 2013* – this is the overarching legislation, which establishes the structure and governance of the NDIS launch transition agency.
- The NDIS rules – these are detailed rules covering issues such as eligibility, plan management and supports as well as accounting for compensation.
- Operational guidelines – these cover day-to-day operations of the trial sites.

National Injury Insurance Scheme

The NDIS will be complemented by a National Injury Insurance Scheme (NIIS), which will cover people who are newly affected by a catastrophic injury as a result of certain accidents. Currently in development, the NIIS will build on existing state and territory accident compensation arrangements to provide support on a no-fault basis. The NIIS will cover four classes of injuries: motor vehicle, workplace, medical accident and general injuries, with the structure and funding arrangements determined individually for each injury type. Operating as a federation of state-based schemes, the NIIS will specify minimum benchmarks that each individual state-based scheme will need to meet.

Minimum benchmarks for motor vehicle accidents were agreed upon during the first half of 2013.

In general, these minimum benchmarks harmonise the states with the NSW Lifetime Care and Support Scheme arrangements. The benchmarks not only specify who is to be covered, which jurisdiction is to provide cover, and exclusions and entitlements, but also sets consistent reporting standards to enable comparison across the states and territories.

The development of nationally consistent minimum benchmarks for workplace accidents is underway, with Safe Work Australia undertaking the necessary technical studies. The development of consistent standards for medical and criminal injuries is proving more difficult and additional working groups have been established to aid the process. Two groups have been established for medical injuries – the first to provide expert advice on technical matters and the second to determine an appropriate definition of “medical accident”. A third working group has been established to examine alternatives for criminal injuries, which are anticipated to form a segment of the broader general accidents component of the scheme.

Who does the NDIS cover?

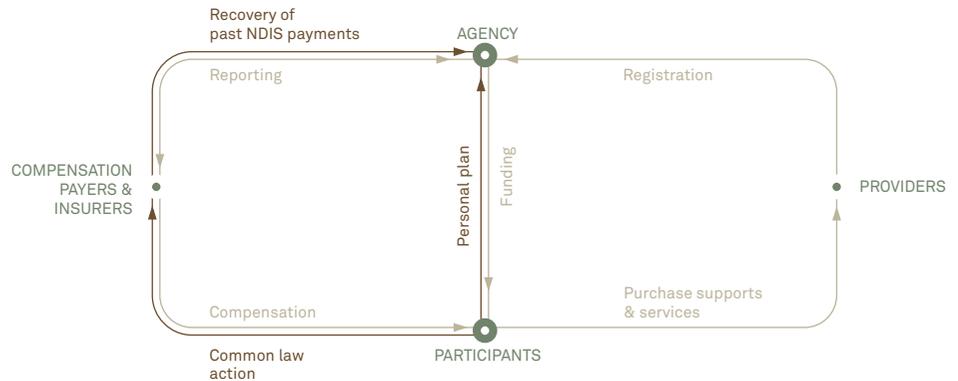
The legislation presents comprehensive NDIS eligibility criteria that cover three key areas:

- Age – applicants must be under age 65 when access is requested.
- Residency – the applicant must be an Australian resident or be the holder of a specified visa and satisfy any other requirements in relation to residence as specified by the NDIS rules.
- Disability – a person must have substantially reduced functional capacity arising from one or more conditions that are likely to be permanent, affect the person’s ability for social and economic participation and result in support needs that are likely to continue for the person’s lifetime.

The legislation also enables the ability to provide early intervention supports to people where these are deemed likely to reduce future needs.

A key difference between the NDIS and existing lifetime care schemes, such as the NSW scheme for motor vehicle injuries, is that the NDIS operates on an opt-in basis for participants. Potential participants need to apply, with the application process including assessment against the access criteria.

FIG 3. Interactions between NDIS stakeholders



What supports does the NDIS provide?

Individual choice and control is an overriding principle of the NDIS. Participants are able to make choices about what care and support they wish to receive and to control the employment and payment of service providers. Funding is provided to participants in an NDIS approved personal plan and participants, or their nominee, have significant freedom of choice in the selection of both services and service providers.

The NDIS legislation is relatively broad in respect of the types of supports and assistance to be covered in that it simply requires the NDIA to determine that these are “reasonable and necessary”.

The NDIS is not intended to provide income replacement, nor services that are already provided by existing government agencies such as Medicare and Centrelink. Supports that may be provided include:

- aids and appliances
- home and vehicle modifications
- personal and respite care
- domestic assistance and transport assistance

- orientation and mobility training
- supported employment services and specialist transition to work programs
- local area coordination and development
- guide dogs and assistance dogs
- whole of life personal planning services.

NDIS: IMPACTS FOR INSURERS

A distinguishing feature of the NDIS legislation is that the NDIS does not remove liability for care and supports from the underlying compensation payer or insurer. This is an unexpected feature of the Act, especially when it is compared to existing legislation around the NSW Life Time Care and Support Scheme.

It may seem that insurers will be negligibly impacted by the NDIS, given that it does not directly remove any existing liability. Yet the legislation enables the NDIA to take over common law actions in the participant’s name, which may lead to a direct impact on common law claim frequency. Moreover, the rapidly increasing demand for attendant carer services is likely to see upward cost pressures in the short to medium

FIG 4. Likely impacts of the NDIS across market segments

Segment	Impact
Common law	Potential effects on liability will be limited to that in relation to settlements for past and/or future care. Frequency of court action may increase as potential NDIS participants may be compelled to seek common law compensation.
No fault	Liability and payments are expected to continue as before. Where an individual is concurrently receiving supports through the NDIS, this may impact the ability to actively manage the claim.
Reinsurance	Since no liability is removed from insurers, little overall change in the size of the reinsurance market is expected. As there will be upward pressure on the cost of care, there may be a flow-on effect on reinsurance premiums.

“Insurers need to be aware of the potential impacts of the NDIS on their business practices.”

term as the sector adjusts. Figure 4 summarises the likely impacts on different market segments. Key potential impacts on insurers are expanded upon in the following sections.

Common law dynamics

The NDIA has broad powers to conduct common law actions in a participant’s name and to seek recoveries from insurers, accident compensation schemes and other compensation payers. Under the NDIS legislation, if a potential participant is able to obtain compensation “under a scheme of compensation under a Commonwealth, state or territory law”, there is no allowance for the subrogation of compensation rights to the agency. If the participant fails to seek compensation from the scheme within a specified period, their personal plan is suspended and they cease to receive NDIS benefits.

In all other circumstances, if the participant fails to take action within a specified period, the agency has broad powers to take over the claim in the name of the participant. This differs from the arrangements in existing no-fault schemes, such as the NSW Lifetime Care and Support Scheme, which explicitly extinguish a participant’s rights to common law compensation in respect of care and support payments.

The agency’s actions in the participant’s name need not be limited to heads of damage that would be covered under the NDIS. However, only payments made by the NDIS prior to the award of damages will be recovered as a lump sum by

the agency. The balance of the damages will be passed on directly to the participant. Nevertheless, any damages for future care or supports of a type that would typically be provided by the NDIS will be used to reduce the future reasonable and necessary payments on an ongoing basis. Thus, the NDIA has an incentive to maximise the care-related damage component of any settlement. For court awards and negotiated settlements that do not explicitly identify the individual heads of damage, the NDIS rules prescribe how the NDIA is to determine the amount of the award that relates to NDIS-type payments.

On the other hand, the ready availability of appropriate care and support for severely injured individuals may lead to a decrease in the frequency of speculative legal actions that arise when no other avenues of compensation are available. Thus, while the introduction of the NDIS is likely to have a direct impact on the frequency of common law actions for personal injury, the magnitude and direction of that impact is highly uncertain at this time.

Reporting requirements

The NDIA is able to seek recoveries from insurers and there are strict requirements for insurers to notify the NDIA in the event that they are found liable. Moreover, it is an offence for an insurer to make a payment to an individual prior to paying the recovery amount to the NDIA. As a result, insurers will need to augment their claims management systems to record the receipt of a preliminary recovery notice and to prevent payments while a notice is in effect.

The legislation outlines a number of responsibilities of the compensation payer or insurer, which carry serious penalties for non-compliance. For insurers, these responsibilities include:

- providing written notice to the NDIA within seven days of becoming liable for or receiving notice that they may be liable for support costs relating to a participant
- not making any compensation payments subsequent to receiving notice from the NDIA that it may wish to seek recoveries, and while that notice is in effect.

Attendant care costs

A large proportion of the increased funding for disability services from the NDIS will be spent on hiring attendant carers, which will lead to a rapid increase in the demand for carers. While there are already efforts underway to attract new workers to the sector, it remains a distinct possibility that demand will far outstrip supply, which will lead to a rapid escalation in the market rate for attendant carers in the short to medium term.

CONCLUSION

The introduction of the NDIS signals a watershed moment in the provision of disability care and support and will have a positive effect on thousands of Australians. Insurers need to be aware of the potential impacts of the NDIS on their business practices. Although it will take some time before the true impact of the NDIS on claims cost is known, early indications may become evident during the pilot phase. ■

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