

## City of Port Phillip Disability Reform Service Review:

- Home and community care (HACC)
- Joint councils access for all abilities (JCAAA)
- Fog Theatre

October 2017

## 1 Introduction

This service review covers two services and one program which represent the bulk of council clients who are likely to be eligible for the National Disability Insurance Scheme (NDIS) :

### **HACC PYP (Home and Community Care Program for Younger People)**

The HACC PYP provides basic support and maintenance services to help people with disabilities remain living at home as independently as possible. It is currently funded and managed by the Victorian Department of Health and Human Services. Some of these clients will transfer to the NDIS as it rolls out. It provides a range of home based and community services for people under the age of 65 years (or 50 years if they identify as Aboriginal or Torres Strait Islanders), and their carers. The mainstream services provided (personal care, home care, property maintenance and respite) will be discussed in this report, and further reports will discuss food services and planned activity groups.

**JCAAA (Joint Councils Access for All Abilities)** provides respite care for people with a disability, in a community setting and with an arts focus.

**FOG Theatre** is a theatre group which provides training for up to 15 people with a disability as a group which works together over a period of time become proficient in performance skills. It provides performances in Port Phillip and outside of the City as well.

HACC PYP and JCAAA have been combined because these services are provided by a number of other specialist disability providers throughout Melbourne. In the new NDIS competitive environment, these services are likely to experience competition amongst providers for clients. FOG Theatre is unique as an inclusive Arts program and theatre company supported in a Local Government context and it is doubtful this program would experience competition.

### **The decision for Council posed by this service review, October 2017**

With Port Phillip scheduled for the April 2018 tranche of NDIS rollouts, Council must decide its future role in direct service delivery for HACC mainstream services and JCAAA.

Key questions:

- 1 Should Council register as a provider for the NDIS for the April 2018 rollout - for the HACC PYP mainstream and JCAAA services and FOG theatre?
- 2 What other roles could Council play?

The Victorian State Government has guaranteed funding for clients ineligible for NDIS until July 2019. We recommend Council defers a decisions about its role in service delivery for these clients until the state government confirms arrangements beyond July 2019, or until July 2018 (whichever comes first). Making a decision in July 2018 will allow 12 months for any transition.

#### **1.1 Brief history of HACC PYP**

The Federal Government has primary responsibility for HACC services for people with a disability. However, in Victoria both state and local government have historically made almost equally strong commitments to its delivery.

In Victoria, the State Government administers the Commonwealth funding, adds some of its own, and distributes it to Victorian councils. Councils also typically provide funding. This is very different to most other states in Australia where the Commonwealth provides funding directly to mainly Not for Profit organisations (NFPs) who provide the service.

Funding has always been delivered in block amounts, based on a formula that calculates the levels of reported disability, socio-economic disadvantage, English as a second language, and a number of other factors.

Once the funding is provided to council, a council assessment team determines who is eligible for the funded services, based on State and Commonwealth criteria. Services traditionally include personal care, home care (assistance with household duties), food services, respite care, and home maintenance. Other HACC funded programs include planned activity groups and food services, and these will be discussed in a separate report to Council. All HACC PYP services are available to people with a disability under the age of 65 years (or 50 years if Aboriginal or Torres Strait Islanders).

The table below shows total Port Phillip HACC expenditure and council's contribution.

Program	Total expenditure 2016/17	Council's contribution
Mainstream (personal care, home care, property maintenance, respite)	\$1,312,926	\$467,212

The table below shows the current number of staff delivering the service, current clients, and the number of current clients who are likely to be eligible for NDIS.

Staff	Current clients of HACC	Likely number of clients eligible for NDIS
30 staff <sup>^</sup>	358	Approx 90

<sup>^</sup> This is an approximate number. Staff in HACC also often provide services to aged services.

## 1.2 Brief history of JCAAA

JCAAA is a regional service funded by the State Government that initially started in 1998 as a partnership between Port Phillip and three other councils (Yarra, Darebin and Banyule). Over time funding sources changed and the committee of management disbanded, leaving Port Phillip Council with a core service of leisure respite to deliver for the region.

Initially the service was aimed at connecting people with a disability to sports groups and it was well aligned with the Recreation and Open Space team. However, this funding dropped away, and remaining funding shifted the service towards a respite service focusing on the arts.

Funding for JCAAA and FOG Theatre will cease when it shifts from the State Government to the Commonwealth NDIS by June 30 2018.

In 2016/17 total expenditure was \$435,802. Council does not contribute funding directly to this program.

Council service participants	Likely number of residents eligible for NDIS
145 across four member councils	Potentially 25%

### 1.3 FOG Theatre

Total Expenditure is \$86,664 with Council overheads. The Council contribution currently \$18,724. It has up to 15 participants. Currently it has State Government funding which ceases on 30 June 2018.

## 2 The NDIS reform and its impacts

### 2.1 What is the reform?

The block funding that local government (and other providers) currently receive to provide services to people with a disability and older people will no longer exist.

Instead, funding will be based on individual assessments and plans – and provided to each individual participant to spend on the services, with the providers, they choose. This is known as ‘consumer directed care’.

This approach significantly changes the system from a monopoly of regional or local services, to one of competition. It means that services whose funding agreements were once local or regional, can now actively compete for clients across borders. It also means that participants can now ‘shop around’ for services. Entrepreneurial skills, such as marketing, business strategy, and scaling up or tailoring services, will become very important to service providers in this new competitive environment.

Victoria will be moving from a monopoly dominated system where consumers do not have a choice of services, to an essentially free market system where consumers have their own budgets and can choose to spend it amongst multiple providers.

Further detail on this is in Appendix 1.

### 2.2 Why is the reform happening?

The reform is designed to create efficient and effective services. The NDIS aims to improve the lives of people with a disability through addressing a significant underinvestment in disability services, to increase the range of providers so that people have more choice, and to encourage innovation in services.

Long-term goals for the scheme include:

- Clients have more choice and control over their services – allowing a focus on early intervention and a lifetime’s approach to their needs.
- The economic participation of people with a disability will increase, as will health and wellbeing, learning and skill development, social inclusion and capacity building. In the process informal support will be strengthened.
- Clients will have a greater diversity of services from which to choose and have greater flexibility in timing and type of supports.

- Clients will be treated as customers, i.e. there is investment in the relationship and client-management processes.

### 2.3 What is changing and who is affected?

From April 2018, a 12 month rollout will occur in our region (Bayside Peninsula) as the Commonwealth's National Disability Insurance Scheme (NDIS) assesses people with a disability for eligibility and shifts those who are eligible across to the scheme. The trial site and the first site for roll-out in the north east metropolitan area have been completed. An additional two other metropolitan areas will roll-out before our region over the next few months (inner and outer east).

It is estimated that about 25 per cent of council's current HACC PYP clients (around 90 people) will be eligible for the NDIS.

The other 75 per cent of our HACC PYP clients (around 269 people) will continue to be funded by the state government to 30 June 2019.

JCAA clients will also be assessed for NDIS eligibility.

Some FOG theatre clients are entering now the NDIS and others will follow from April 2018.

Those eligible for NDIS will have a budget to purchase their preferred services, from a range of NDIS service providers.

### 2.4 What is the likely impact on the disability service sector?

Experts from a MAV seminar had the view that under the NDIS there will be a move away from charitable approaches to a commercial approach, driven by the competition that will emerge with the significant amount of funding that will be available. There will be a shift in offerings away from mandated service standards to services that customers want.

As a result there will be less predictable patterns of demand for services. This means that organisations will need to market their services, and individualise and coordinate services more effectively.

Some NFPs (not-for-profits) will likely fail in the new marketplace, others will 'scale up' (successfully or not successfully), and the market is likely to become dominated by larger providers, including for-profit providers.

With a national rather than regional market, providers will likely jump traditional borders (i.e. begin to provide their services interstate). With increased demand for service driving workforce growth and competition for high quality staff, there is likely to be a shortage of staff (or at least well qualified and experienced staff). This may impact on the quality of care for some participants.

Some participants are likely to choose to self-manage their supports (i.e. employ staff directly as opposed to buying a service from an organisation). Profitability will be more precarious under this model, with cash flow as a key potential issue for organisations. Organisations may respond by cherry-picking the most lucrative services and leave participants without some necessary, but less lucrative services. Where profitability is not possible, some areas and cohorts may be underserved. The experts believe that councils that decide to compete in the disability sector will experience a 'slow bleed' as they are unable to deliver services 'at cost'.

However, experts also warned that there is likely to be a shortage of staff that may hamper early efforts for agencies and businesses to scale up. This has been reported in the NEMA roll-out.

For a full description of the likely impact of NDIS on the disability service sector, see Appendix 2.

## 2.5 What do the changes mean for the City of Port Phillip?

Port Phillip, like almost all other councils in Victoria, has been delivering HACC PYP services to people with a disability since the 1980s.

Victoria is fairly unique for its local government involvement delivering HACC services. NFPs usually dominate service delivery in other states. With the shift from block funding to more competitive funding arrangements, and the other potential roles that local government can play in the new NDIS environment, Victorian councils are questioning their role in direct service delivery.

So far, none of the metropolitan councils involved in the trial sites or the NEMA rollout have chosen to register to provide an NDIS service. Progressively, other councils in the next three rollouts are indicating their intention not to deliver NDIS services. There has been interest in being involved in the rollout to ensure its success for local citizens.

The NDIS rollout for Port Phillip will begin in April 2018. Ideally, residents will have access to a range of quality providers to choose from.

As part of the Review, the likelihood of market failure was examined; that is, how likely demand for disability services in Port Phillip wouldn't be met. An assessment of the 'attractiveness' of the market rated Port Phillip highly in:

- participant density (where efficiencies are created by having consumers living close together)
- ratio of scheme cost growth to participant numbers growth (likelihood of attracting high average funding per person)
- ratio of scheme cost growth to labour force growth (where funding growth is predicted to increase quickly, thereby reducing any risks with increasing a workforce).

In short, Port Phillip will be an attractive market for providers to compete for clients. (See Appendix 3 for details)

While Port Phillip is likely to be an attractive area for NDIS providers, the free market approach underpinning the NDIS assumes the market will respond without any intervention. However, gaps in services have occurred in the trial sites. A similar issue of significant gaps in service delivery has been observed by the Commonwealth in using a free market approach for childcare. The Commonwealth responded by encouraging councils to play a planning and support role to ensure adequate provision. While the Commonwealth has not suggested this role in relation to NDIS, councils are the only organisations and level of government to have the insight and partnership capacity to potentially address service gaps at a local level, through planning and other mechanisms.

### 3. Future options for the City of Port Phillip

#### 3.1 Option 1. Council becomes an NDIS provider for HACC PYP, FOG Theatre and JCAAA services

**This option is not recommended.**

A report was commissioned to examine the feasibility of Council becoming a provider of NDIS in a competitive market. The key conditions for operating in the new market-driven environment were identified as:

- Efficiency – can you deliver the service for the NDIS price?
- Competitive culture – do you have an organisational culture that is competitive?
- Scale – can you become larger in order to keep your costs down?
- Governance – do you have a board with strong experience and skillset that's appropriate?
- Legislation – are you complying with legislation?

This section examines the findings of the report.

##### 3.1.1 Efficiency

An organisation's efficiency will be very important to financial viability in the NDIS market. The NDIS is enforcing a price cap on services, ie organisations are not allowed to charge a higher hourly fee than what is proposed by the NDIS. The price cap has been set very low in order to encourage efficiency in the sector, and value for customers.

NFPs and single-operator businesses can achieve efficiency through low overheads. Some large for-profits are investigating whether they can improve efficiency and profitability by increasing their scale (see Scale below).

The level of efficiency required to operate under NDIS is difficult for councils who typically have higher costs. The Review found that compared to a NFP, council's costs for corporate overheads were 56 per cent higher (overheads for a NFP are typically 12.9 per cent of total expenditure, while council's overheads are 20.1 per cent). Administration costs were even higher (23.8 per cent for NFPs and 69.3 per cent for council.)

Councils have larger corporate overheads related to administering an enterprise that is as broad and complicated as local government, and extra costs associated with additional legislative requirements. This means that it is very difficult for councils to operate services funded by other levels of government without subsidising them.

The NDIS price cap is far lower than the HACC funding that councils currently receive for providing disability services. Victorian councils subsidise HACC disability services and we partly fund JCAAA's overheads.

In the 2015/16 financial year, JCAAA and three HACC programs ran at a deficit of \$561,802. The Review estimates that if council registered as an NDIS provider, assuming the same level of clientele, the deficit would increase to \$1,078,618<sup>1</sup> in 2018/19<sup>2</sup>. This significant increase is due to the NDIS paying a lower unit cost price than HACC, and because unlike HACC, the NDIS does not allow user fees to be charged to clients.

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<sup>1</sup> This is because funding levels are lower for NDIS than HACC.

<sup>2</sup> The NDIS pay a lower unit cost price as well as prevents providers from charging client fees (which HACC currently allows).

Post July 2019, if the state government continued to fund clients not eligible for NDIS at their published rate of \$46.37 per hour, the deficit would rise to \$1,311,430.<sup>3</sup>

It is not possible for council to recoup the full cost of the service through fees because the NDIS has ruled that organisations are not allowed to charge more than their published fee schedule. It is also not possible for council to subsidize the service because of the National Competition Policy (see below).

### **3.1.2 Competitive culture**

The NDIS reform is aimed at increasing competition amongst providers in order to create greater choice of services for people with a disability. This means that a competitive culture will be important to retaining and attracting clients. A competitive culture includes commercial risk-taking, efficiency orientation, sales ethos, self-directed leadership, innovation, and marketing.

Local government aims to provide services for the common good that would not otherwise be provided by private enterprise. For this reason its culture is not strongly competitive.

An assessment of Port Phillip's competitive culture across three main domains (business ethos, systems and processes, and structure and organisation) found the culture not sufficiently developed to operate sustainably in a competitive marketplace.

#### **Scale**

As mentioned above, the size of a business can help with efficiency and financial viability. A very small scale and a very large scale can both be an advantage. The Review's assessment of the future market for NDIS services is that it will be dominated by micro-businesses (e.g. sole trader allied health professionals offering therapy, or carers) and relatively large corporatized providers.

In determining a minimum efficient scale at which a business could sustainably operate they refer to disability services that have been sustainable on annual turnovers of \$1.5 million, but suggest that a more sustainable service would have an annual turnover of at least \$4 million.

Council's underlying potential NDIS annual turnover is estimated at \$334,451. The Review suggests that the service would need to increase its scale by at least tenfold to achieve minimum efficient scale under NDIS.

Increasing scale by this significant amount would mean we would need to aggressively pursue clients from other providers, potentially including NFPs we have long standing relationships with. Our traditional role with NFPs operating in our boundaries has been one of cooperation rather than competition. This would radically shift the relationship and potentially create issues for our role as community leader, planner and networker. We would also need to pursue customers across our municipal boundaries.

### **3.1.3 Governance**

Being a specialist disability provider is a competitive advantage because of the ability of an organisation to easily diversify its services, and because its board also tends to have specialist disability expertise.

The Review identified that the experience and skillset required to operate a competitive business under NDIS would include governance experience in a substantive commercial enterprise, commercial leadership capacities (corporate commercial strategising, market

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<sup>3</sup> These figures are based on JCAAA and three HACC programs which represent the bulk of the HACC services – these HACC programs are assumed to be indicative of the general efficiency of the whole HACC program.



analysis and marketing), disability sector experience and knowledge, financial governance experience, experience in workforce development strategies, and strong technology awareness.

Council is not a specialist disability service provider, but has provided complementary supports. Because we are a level of government, we also have a different governance structure and purpose to a specialist disability provider. However, this is a disadvantage in a competitive service industry.

#### **3.1.4 National Competition Policy restrictions on local government**

The Commonwealth's National Competition Policy (NCP) limits the extent to which government is involved in delivering services in competitive environments. It states: 'Government business should not enjoy any net competitive advantage simply as a result of their public sector ownership.' In essence, this means that government should not be subsidising services that are in competition with for-profits. The NCP makes an exception where objectives can't be met through any other ways. The NCP does not apply to government being in competition with NFPs.

In the past, the NCP has not applied to local government disability services because the funding and services operated in a non-competitive environment. However, the new NDIS service system will provide opportunities for for-profit businesses to participate in the market and compete directly with local government and other NFPs. (See Appendix 4 for detail).

The implication for local government is that to remain in service delivery in the new NDIS service system, we would need to deliver services within the funding provided by the Commonwealth, i.e. not subsidise the service. This would be very difficult for councils in Victoria, including Port Phillip, to achieve, because –

- We are not as efficient as other providers (see section on Efficiency above)
- We are currently dependent on fees to help cover the cost of service delivery, and this will not be an option under the NDIS
- The NDIS pays less than our current HACC funding

The NCP makes an exception to subsidisation where objectives cannot be met without subsidising a service. To establish a case, a council would need to conduct a Public Interest Test in line with the Competitive Neutrality Policy Guidelines published by the Office of the Commissioner for Better Regulations. In this test, a council would need to establish why the objectives could not be met without subsidising a service, analyse any other ways in which the objectives could be met, consult with the broader community, and make a decision. In the case of NDIS, it is very likely that in analysing alternative approaches to achieving the objectives, that alternative approaches would be just as effective and less expensive and council subsidising its own service. (See Appendix 4 Part B for further detail on the Public Interest Test).

### **3.2 Option 2: Continue, and expand Council's role as a leader and planner**

**This option is recommended.**

Local government has a distinct advantage that no other level of government or service provider has - the capacity to understand and influence outcomes for its local community.

We already take advantage of this capacity. We have a long history of supporting people with a disability, not just those eligible for the NDIS. As the level of government responsible for almost all local, public community infrastructure we have a significant impact on the extent to which people with a disability can participate in their local community.

The state government estimates that there are approximately 18,000 people with a disability in Port Phillip, including older people.

Local government inherits its responsibilities to people with a disability through four state government Acts - the Local Government Act 1989, the Disability Act 2006, the Victorian Charter of Human Rights and Responsibilities Act 2006, and the Disability Discrimination Act 1992 (DDA). (For further information on our responsibilities under these Acts, see Appendix 5).

Currently we have a Metro Access officer who supports our community to develop new ways of including people with a disability in local community life. Our arts program has made a significant effort to provide amongst the best inclusionary programs in Melbourne. By contrast, our lower investment in other areas, such as the Disability Action Plan and facility improvement, has meant a very slow improvement to infrastructure, services and programs. For example, at current rates of investment it will take over 70 years for all of our buildings to be compliant with the Disability Discrimination Act.

While service delivery of NDIS may not be a viable option for Council, there is an opportunity for us to re-invest our current HACC subsidy of mainstream services (\$460k) into the broader needs of all people with a disability who live in, or visit, Port Phillip. This could include investing in:

- A higher level of infrastructure funding to address accessibility of our buildings
- Continue the Metro Access role beyond 30 June 2018
- Commission a social enterprise café in Fitzroy Street, to provide paid training leading to paid employment for people with a disability
- Consider with Arts Access options for the provision of FOG Theatre as an inclusive arts program. Alternatively Council could continue to run FOG Theatre as part of its Access Arts core programs.
- A number of unfunded initiatives in our Disability Action Plan

In addition, we can play a role in ensuring the roll-out of NDIS is a success, and that people with a disability living in the municipality continue to experience access to a wide variety of quality services to meet their diverse needs.

Port Phillip has a number of disability providers located, or providing services, in the municipality. But at this stage we don't know if they are providing the right services, or NDIS services at all. It is to be expected that large-scale, significant change to an entire system will not go smoothly. It might also be expected that introducing a fundamentally different approach to service delivery (from monopolies to competition) across a large system will provoke significant growing pains, as traditionally non-competitive organisations learn new entrepreneurial skills. As NDIS clients are defined as experiencing the severest forms of disability, the impact of the system failing to respond to their needs can be quite significant. We can leverage our local knowledge, local contacts, and if necessary, our resources (such as buildings, land and funding) to address any gaps in the market. There are several ways we could intervene to either avoid issues outlined in the previous sections, or to respond to them when they arise. This includes:

- Advocating to the NDIA to avoid understaffing during the April 2018 transition. Or if required, provide assistance for the transition of council's clients (as the north east region has done).<sup>4</sup>
- Assist the NDIA, in partnership with the appointed Local Area Coordinator, to communicate to the community about the changes for NDIS and the process for accessing services.
- In partnership with the Local Area Coordinator, provide advocacy and support for vulnerable NDIS clients to ensure their needs are met through the transition and post-transition. This might include proactively seeking out potential vulnerable clients who aren't currently using our services and assisting them through the transition and the early phases of the system. And to play a longer term role as an advocate and supporter of vulnerable clients within the NDIS system, in partnership with the NDIS Local Area Coordinator.
- Advocating on behalf of people with a disability to the State and Commonwealth governments.
- Attracting services into Port Phillip, representing diversity and choice, by:
  - Encouraging well known quality providers to offer services in the local area
  - Supporting disability expos to connect potential providers to clients
  - Identifying why service gaps are occurring at the local level and responding. Where gaps are occurring because of provider lack of knowledge about local needs, we can address this with current or new providers. Where market forces have failed, we can consider using infrastructure and grants processes to assist with financial viability.
  - Assisting current local NFPs adapt to NDIS by connecting them to NDIA sponsored training. We can also offer courses in entrepreneurial skills through our economic development role. This would help providers new to Port Phillip maintain their viability and avoid potential issues of NFP failure and potential service gaps.
  - Delivering the ILC framework (Information, Linkages and Capacity Building) for NDIS. The framework aims to keep people with a disability informed in order to build their capacity to make good decisions about services, and alternatively, build providers capacity to meet the needs of people with a disability. We would be well placed to observe the framework's progression to understand its applicability to our community. So far, while the majority of those who have received funding have been NFPs, some councils have won funding. The option to become a LAC provider (Local Area Coordinator), which the Review does not recommend, is no longer an option because applications have closed for the Bayside Peninsula.

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<sup>4</sup> The councils experiencing the current NDIS roll-out have all responded slightly differently to supporting the NDIA. Generally, extra staff are required to assist clients' initial transition to NDIS (ie assessment and connection to services). In some instances current council clients have asked their councils for assistance in the assessment process for the NDIS because of confusion about the new system and a lack of confidence in their own ability to navigate its complexity.

## Appendices

### Appendix 1 – Further information on Disability and Aged Care Service reforms.

#### Human services reforms

##### Nature of human services reforms

Current reforms to human services in Australia – including disability services and aged care services - are impacting on local government, particularly in Victoria.

The reforms to disability services are being primarily delivered through the NDIS. With the conclusion of the NDIS trials, the staged roll-out of the Scheme (below) has begun to impact some Victorian municipalities.

Australia is also approximately mid-way through aged care reforms. These reforms have had relatively little impact on Victoria to date, compared with the changes that will occur post July, 2019. Some recent changes have occurred, specifically the shift from State to Commonwealth funding for some aged care programs (below). A more significant shift for Victoria will occur in July, 2020, when all non-residential aged care service types will merge into a single program.

Until recently, Victorian local governments provided HACC services, which provided services to children and adults under 65 years of age with a disability, and to persons 65 years or over (or 50 years and over for Indigenous people) requiring assistance to remain living at home.

On 1 July 2016, the HACC Program in Victoria was split between the State and the Commonwealth based on client age. HACC service providers that delivered services to older people now have a grant agreement with the Commonwealth Department of Health to deliver services under the Commonwealth Home Support Programme (CHSP). Providers which deliver services to younger people have a service agreement with DHHS under the HACC Program for Younger People (HACC PYP).

#### Disability services

Full implementation of the NDIS also began on 1 July 2016 in the North East Melbourne Area (comprising the municipalities of Whittlesea, Nillumbik, Darebin, Banyule and Yarra). As the Scheme rolls out over the three years to 30 June, 2019, a proportion of people aged less than 65 who are currently receiving HACC PYP services will be invited by the National Disability Insurance Agency (NDIA) to test their eligibility to participate in the NDIS.

#### Implications of reform

##### Individualisation, marketisation and competition

The changes to the service system that are currently occurring with NDIS – known as ‘Tier 3 services’ - and to aged care services – known as ‘Consumer Directed Care’ - in the future bear similarities. Both shift funding relationships such that funding for services will not be paid by block grants to agencies, but rather, individuals will receive funding directly to spend with their preferred agencies. This approach, known as ‘individualisation’, will stimulate significant change to human service sectors, including greater consumer choice and control over where to purchase services and supports and greater provider competition within a market-driven service system.

The NDIA has nominated the period 1 April, 2018 – 31 March, 2019 as the period for the roll out of the NDIS in Bayside Peninsula region of metropolitan Melbourne, which includes the municipality of Port Phillip. From April 2018 there will be a 12 month transition stage for people under 65 years of age who are eligible for NDIS to move from the HACC PYP to the NDIS.

### Eligibility

Crucially, a large proportion of younger people previously receiving HACC services will not be eligible for NDIS funding. Early estimates are that up to 75% of HACC clients aged less than 65 years will not become NDIS participants. At this stage, DHHS has committed to “...funds stability for those clients over the period the NDIS roll out in Victoria.”, but there is uncertainty as to whether it will continue funding NDIS-ineligible clients (e.g. those with complex mental health and drug and alcohol issues) post June 2020.

## Appendix 2: impact of the NDIS on the disability service sector

### What are the challenges of NDIS?

Any new system is likely to have ‘teething issues’ during the transition and potentially the first few years. This section examines potential challenges as identified by experts, consultants and by Port Phillip staff. Some challenges have already been identified through the NDIS trial sites and the current rollout in the north-east, others are more ‘probable’ or ‘potential’. We need to monitor the probable or potential challenges, given the potential significant negative impact of many of them.

#### Known challenges

The known challenges identified by experts includes:

- The current roll-out of NDIS in the north-east region of Melbourne has been beyond the capacity of the NDIA. Councils were asked to provide hands-on assistance to transition eligible council clients to NDIS.
- Consultants<sup>5</sup> have identified that vulnerable clients (including those with cognitive impairments, Aboriginal and Torres Strait Islander backgrounds and culturally and linguistically diverse groups) may experience less or worse access to services. Early anecdotal evidence suggests that this might be the case in the early NDIS sites. Saward Dawson suggest that the ‘rational choice’ that underpins NDIS assumes equally informed and capable consumers, which is not always the case.

Saward Dawson point out that while the Productivity Commission estimated that 410,000 people would be eligible for NDIS, the latest estimates are 460,000. The Commonwealth has indicated an intention to constrain real NDIS funding within the Productivity Commission’s estimate (\$22.8 billion). They suggest that criteria may narrow, resulting in some unmet demand and/or reductions in the scale and scope of supports.

- Saward Dawson indicate that it is extremely likely that the efficacy of mental health services will decline under NDIS. The Mental Health Council of Tasmania indicated that early calculations suggest that as many as 90 per cent of people with a mental illness would not be eligible. Anglicare Tasmania’s estimates were lower, but still concerning (30-40 per cent). A senate inquiry has been announced to examine the impact of NDIS on those with a psychosocial disability.<sup>6</sup>
- Roland Naufal (an expert who spoke at an MAV forum) states that the market forces approach is not functioning in all cases, with some examples of market failure already (rural and remote, CALD and Indigenous).<sup>7</sup> A recently released evaluation report on the trial sites confirms that the NDIS market system is not without failures. Twenty-seven percent of clients in trial sites indicated they could not access some of the services they were funded for – 41 per cent because the wait time was too long, 34 per cent because of a lack of local provider, 24 per cent due to the lack of quality of the available provision, and 9 per cent because of cost. The Victorian trial site showed that 17 per cent of clients are more likely to not receive the services they required than the NSW site. Older NDIS participants were more likely to experience unmet demand. For young people 13 years or under, those with developmental or congenital disabilities were more likely to experience

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<sup>5</sup> MACH 2, Saward Dawson

<sup>6</sup> <http://www.abc.net.au/news/2017-01-07/mental-health-patients-may-slip-through-ndis-cracks/8167056>

<sup>7</sup> <http://www.disabilityservicesconsulting.com.au/resources/lessons-from-the-trial-sites-part-2>

unmet demand. Those aged over 15 years, people with a physical disability were more likely to experience unmet demand.<sup>8</sup>

### Probable and potential challenges

The NDIS trial site evaluation examined unmet demand from the client's perspective. Others have explored the variables that might mean the system is unable to meet demand.<sup>9</sup> This is examined below, along with other challenges identified as either probable or potential by experts or staff:

- Service providers<sup>10</sup> may not be able to manage the transition to a consumer led system causing service provision gaps and some organisations to fail.
- Service gaps may emerge as service providers enter and exit due to market forces.
- Service providers may cherry pick lucrative services and show a lack of interest in services with marginal profits.
- Non-NDIS programs delivered by service providers who do not survive in the NDIS market may be jeopardised, impacting more broadly on the community. If a service provider collapses, proper client transitions may not occur. If some well-known and valued Port Phillip service providers do not survive, this would likely create a ripple effect in the community.
- As the NDIS rolls out, Victorian government funding for disability services will shift from the State to the Commonwealth to fund the reforms. It is not yet clear if the remaining funding and services will be adequate to service those with a disability who are not eligible for NDIS. MACH 2 suggest that there may be increased pressure on disability services that aren't NDIS providers and universal service systems (e.g. GPs, hospitals, community health), as those who are not eligible for NDIS try to locate alternative providers to meet their needs.
- Saward Dawson suggest that service diversity is likely to reduce as the scale of service providers increases, at least in the medium term. Small, niche programs are developed less quickly than scale-efficient programs.
- Saward Dawson suggest that current collaboration between service providers may be compromised, particularly in the early stages of NDIS, as providers shift their attention to adapting their services to the new competitive environment.
- Saward Dawson also believe that the actuarial approach that underpins the insurance scheme may cause a bias towards short term cost reduction at the expense of investment in long term cost effectiveness.
- Roland Naufal has also suggested that there is likely to be a shortage of one-off and short-term supports for people with a disability who are not eligible for NDIS. This hasn't been noticed in the trial sites because the 'old system' was still functioning alongside the new NDIS system.<sup>11</sup>

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<sup>8</sup> National Institute of Labour Studies, Flinders University, Evaluation of the NDIS: Intermediate report, September 2016.

<sup>9</sup> MACH 2 (See Appendix 3) , Roland Naufal <http://www.mav.asn.au/events/event-presentations/Pages/disability-presentations.aspx>

<sup>10</sup> Service providers can be for-profits or NFPs.

<sup>11</sup> <http://www.disabilityservicesconsulting.com.au/resources/lessons-from-the-trial-sites-part-3>

**Conclusion**

It is to be expected that large-scale, significant change to an entire system will not go smoothly. It might also be expected that introducing a fundamentally different approach to service delivery (from monopolies to competition) across a large system will provoke significant growing pains, as traditionally non-competitive organisations learn new entrepreneurial skills.

As NDIS clients are defined as experiencing the severest forms of disability, the impact of the system failing to respond to their needs can be quite significant. The next two sections of this report examine the situation in Port Phillip and what role Council might play in the future.



### Appendix 3: Port Phillip market

#### Attractiveness of the Bayside Peninsula NDIS region

##### Participant density

The NDIA concluded that the Bayside Peninsula NDIS region will have the fourth highest (of 17) participant density per 100 km<sup>2</sup> in Victoria, as shown below. This places the region in the top quartile of participant densities.

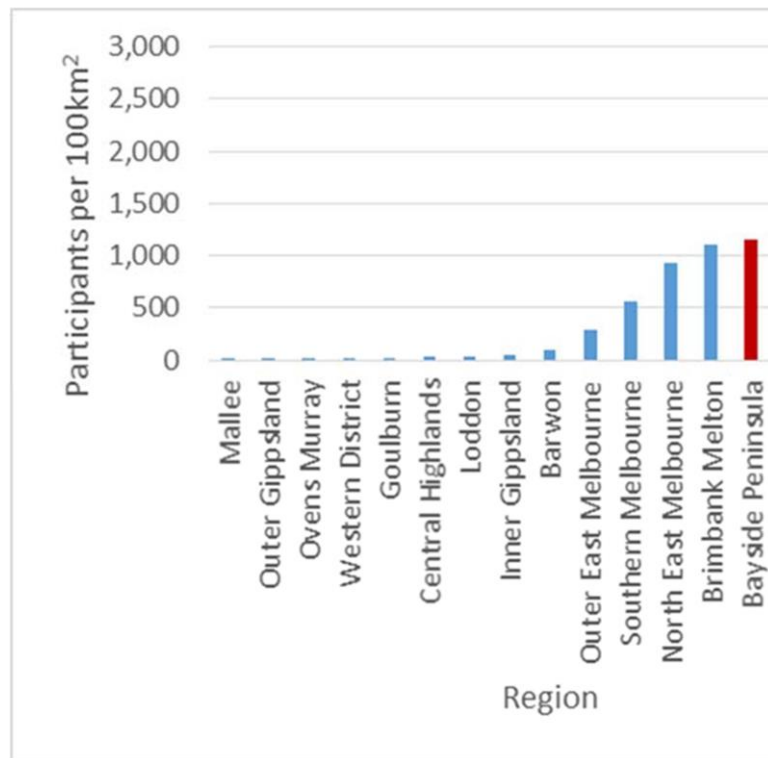


Figure 3 – Participant density in Victorian NDIS regions  
Source: Market Position Statement, Victoria(9)

##### Scheme cost growth: participants growth

As shown below, our analysis found that average NDIS funding for each new participant in the Bayside Peninsula NDIS region will be the fifth most attractive in Victoria. This places the region in the top third of NDIS regions ranked by cost: participant growth ratios.

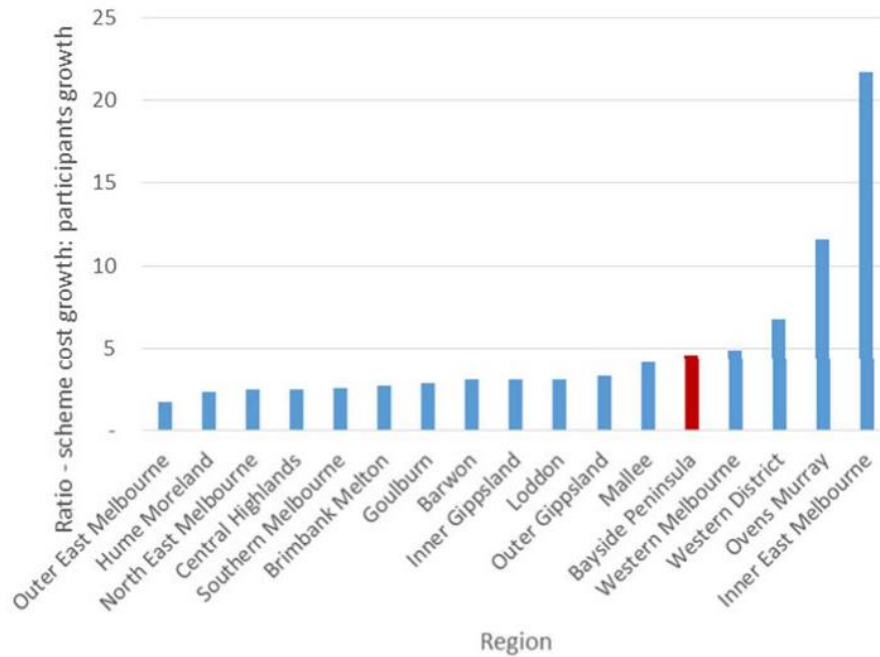


Figure 4 – Cost: participant growth ratios in Victorian NDIS regions  
 Source: NDIS Market Position Statement, Victoria(9)

**Scheme cost growth: labour force growth**

As shown below, our analysis suggested providers in the Bayside Peninsula NDIS region will have the third lowest difficulty in Victoria in supplying staff to meet demand for additional disability services. This places the region in the top quintile of cost: labour force growth ratios.

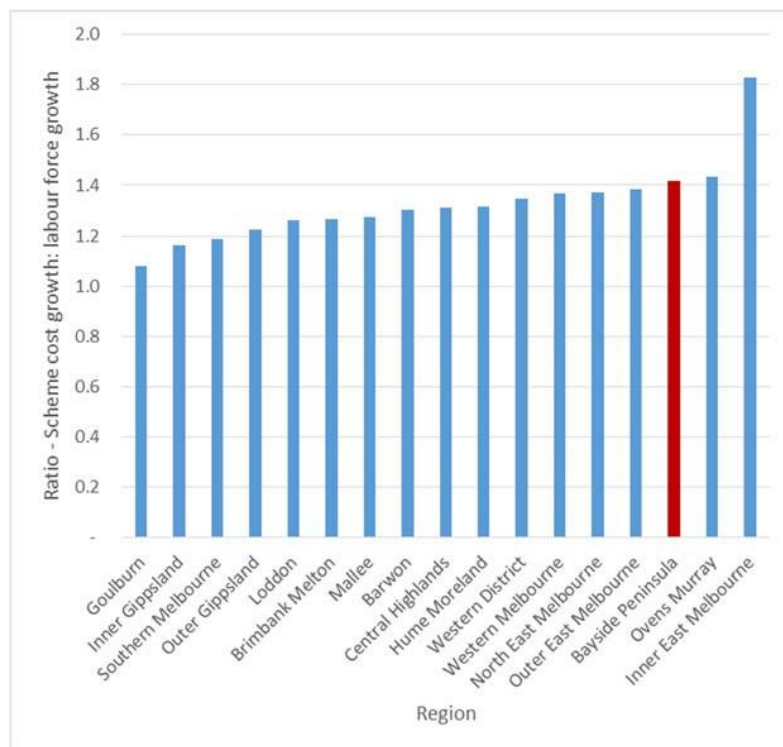


Figure 5 – Cost: labour force growth ratios in Victorian NDIS regions  
 Source: Saward Dawson analysis of NDIS Market Position Statement, Victoria(9)

### Existing providers

There are a number of not for profit providers who operate or intend to operate in the City of Port Phillip. Of these, we categorised the following as substantive, long-standing not for profit service providers:

- Australian Unity
- OzChild
- STAR (formerly Inner South) Community Health Service Limited
- Melbourne City Mission
- Royal District Nursing Service
- Australian Community Support Organisation
- Bayley House
- Calvary Health Care
- Marillac
- The Uniting Church in Australia including Prahran Mission
- Wesley Mission Victoria
- Sacred Heart Mission
- Independence Australia

### Conclusion

Since the roll out of the full NDIS has commenced in one region – NEMA – it is difficult to draw firm conclusions about the likelihood of market failure. However, in general, the high number of providers that registered to supply the Barwon trial site and early, anecdotal evidence of supplier activity in NEMA suggest a robust market is developing.

Our analysis suggests, on multiple grounds, that the Bayside Peninsula NDIS region will be a relatively attractive NDIS region for suppliers. Furthermore, a number of substantive, long-standing not for profit service providers are already present in the City of Port Phillip or adjacent municipalities. In the light of these findings, we assess the risk of market failure in CoPP's catchment as low.

## Appendix 4 National Competition Policy

Part A – National Competition Policy and how it works

Part B – Public Interest Test and how it works

### Part A – National Competition Policy and how it works

The National Competition Policy comes into effect where a government service is competing in the market. The market is defined as for-profit business and does not include not-for-profits. The policy aims to facilitate effective competition in the interests of economic efficiency while accommodating situations where competition does not achieve economic efficiency or conflicts with other social objectives.<sup>12</sup>

In practical terms this means that a government service identified as competing in a market should not subsidise a service unless economic efficiency or social objectives cannot be obtained without the subsidy.

In Victoria the NCP takes effect through the Competitive Neutrality Policy (CNP) and the Office of the Commissioner for Better Regulation (previously the Victorian Competition and Efficiency Commission) provides a 'watchdog' role.

The Victorian government provides two tools to test compliance with the CNP (1) a test to determine if a service is being subsidised and to determine full cost recovery fees (2) a public interest test to determine whether social objectives are more important than subsidisation.

None of this applies if the service is not competing in a for-profit market.

Currently, council's HACC service is not in a competitive market because the NDIS does not yet exist in Port Phillip, and the HACC and aged care block funding prevents any competition. The question for Port Phillip is will there be a competitive market in the future?

The NDIS trial in Victoria provides only partial information on a competitive market for councils. National Disability Scheme Victoria suggested that an overall increase in disability spending in Victoria, from \$1.6 billion to \$5.1 billion by 2019, was likely to attract for-profits into the sector. They found that the region attracted over 400 providers, including 30 from interstate. This consisted of services from sectors such as transport, home mods, and allied health, some of which were for-profits and sole traders.<sup>13</sup> However, during the trial Geelong Council continued to receive block funding for HACC clients, and no others were permitted to compete for Council clients. In other words, while it was clear that for-profit providers were attracted to the market, there was no opportunity to understand what would have happened if Geelong Council found itself in a truly competitive market.

More recently the disability advocacy group NSW Disability has predicted that NDIS will open the door to an influx of for-profit companies.<sup>14</sup> The NDIS trial site saw small professional practices or individuals setting up (e.g. speech therapists). The Review predicts that the market will be dominated by very large, corporatized organisations and very small operators

However, very large NFPs have been corporatized for some time and have certain advantages that suggest they will continue to dominate the market. Very large for-profit organisations are beginning

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<sup>12</sup> National Competition Policy and Local Government, Revised 2011, Department of Planning and Community Development.

<sup>13</sup>

[http://www.css.org.au/Portals/51/NDIS%20presentation%20\\_%2019%20May%202014\\_James%20OBrien.pdf](http://www.css.org.au/Portals/51/NDIS%20presentation%20_%2019%20May%202014_James%20OBrien.pdf)

<sup>14</sup> <http://www.governmentnews.com.au/2014/08/ndis-operating/new-competitive/market/>

to move into new markets, such as Australian Unity and Bupa. Serco has also been investigating the viability of providing disability services.<sup>15</sup>

Apart from local government, the aged care sector is dominated by NFPs delivering the kinds of services that local government provides, but there are also many for-profit providers in services such as home care and residential care. At this stage it is unclear the extent to which current for-profit, home care providers, or other for-profits not currently in the industry, will expand into disability services. However, the current size of the local government market, and the lack of competitive practices amongst councils, is likely to be tempting to for-profits.

The presence of for-profit providers somewhere in Australia is not enough to invoke the CNP. The CNP is invoked where a for-profit provider is directly competing for clients with Council, i.e. within its geographic service boundaries. They also need to be competing directly for the kinds of services that Council provides, which for NDIS and aged care services is personal care, home support, property maintenance, respite, PAGs and food services. For-profit Australian Unity already offers these services within Port Phillip. The kinds of smaller for-profit practices reported in the NDIS trial did not appear to provide these services. However, sole for-profit providers who provide some of these services (personal care, home support, respite) are already emerging prior to the rollout of the NDIS in an uberized market, i.e. as sole providers who are connected to clients through a third party website.<sup>16</sup> Better Caring has vetted 7,000 carers who are now on their website, and claims that 3,000 clients are also registered to employ their own carers. While it is easy to identify large for-profit providers operating in Port Phillip, it would be far more difficult to locate sole operators. Yet the presence of one sole operator in Port Phillip invokes CNP.

This situation is made even more complex by an analysis from the Review that if we were to become an NDIS provider we would need to scale up our service by a factor of 10. To achieve this it is very likely that we would need to significantly diversify our service offerings and/or significantly increase the region we service beyond Port Phillip's boundaries. This would increase the chance of competing with a for-profit both in a broader range of activities as well as a geographic space.

The NCP/CNP does not exclude local government from providing services in competition with for-profit providers – only from subsidising them (unless efficiency or social objectives cannot be obtained without the subsidy – more about this in Part B). Usually this means that councils need to ensure that the fees they charge for services are full-cost-recovery (i.e. they cover all costs that a business would incur). However, this is not possible under NDIS. NDIS does not allow any fees to be charged to clients. Even if the Commonwealth removed the cap, councils' fees would need to be competitive with other providers or councils would lose their clients.

As mentioned in the main report, councils can subsidise services, even where other governments are already providing subsidies, if for-profits refuse to enter the market (e.g. where there is low funding for food services and PAGs, or in remote areas where travel costs are too high to deliver services sustainably). In those instances councils can either provide services directly, in partnership with others, or provide other incentives to encourage providers into their region (e.g. access to cheap infrastructure or extra funding). Councils can weigh up the pros and cons of different models of service provision, including cost, expertise, and capacity to influence service delivery, to decide whether it will produce a more effective and efficient outcome to provide service delivery themselves, or to use other mechanisms to obtain the outcomes through other providers.

Conclusion

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<sup>15</sup> The Australian – <http://www.theaustralian.com.au/national-affairs/health/serco-sights-on-ndis-billions/news-story/a1b150da9452d6cab975464>

<sup>16</sup> Australian Financial Review - <http://www.afr.com/technology/carers-marketplace-better-caring-raises-3-million-from-ellerston-ventures-20161018-gs4n1o>

Council currently has a for-profit delivering home care services into Port Phillip. However, were this organisation to leave Port Phillip, Council is still likely to experience competition from sole provider for-profits into the future. Council's capacity to provide services that efficiently compete with other providers has been established as very problematic.

If Council believes the sector is unable to provide the outcomes its own services currently provide, we have the option of investigating a public interest test, or exploring a number of our own funding mechanisms to encourage others to provide those outcomes. We might consider the use of other mechanisms to attract particular providers to deliver services (e.g. access to cheap infrastructure or funding). This is likely a cheaper option which will provide the same outcome, and will allow us to use savings to further expand our other services to people with a disability.

### **Part B – Public Interest Test and how it works**

Under the competitive neutrality policy, governments can subsidise service delivery where they can illustrate that efficiency or social objectives cannot be achieved without a subsidy. Governments are required to conduct and pass a Public Interest Test to illustrate the need for subsidies. To satisfy the requirements of the policy, the Public Interest Test should, at a minimum:

- clearly identify the policy objective(s) to be achieved and ensure that it has official endorsement (for example, stated by a Minister, a local government body or in an official policy document);
- demonstrate that achieving the stated policy objective(s) could not be achieved without a subsidy; and
- determine the best available means of achieving the overall policy objectives, including assessing alternative approaches.

Legal advice from Maddocks provides insight into how the PIT functions in practice. Governments need to follow these steps:

1. Clearly articulate what its policy objectives are in relation to a service
2. Show how these policy objectives would be compromised if it were to implement fully cost reflective pricing
3. Consider other means of achieving those policy objectives
4. Seek public comment on these issues; and then
5. Consider all of these matters and make a decision.

The key component to conducting a successful PIT is the level of detail that needs to be provided about council's service as well as other models for achieving the same objectives. Councils need to be completely transparent about the costs of each alternative option, compared to a council-subsidised service. In the case of NDIS, it is likely that councils could achieve the same objectives at a much lower rate of investment with alternative options, compared to subsidising their own services.

## Appendix 5

The Local Government and Disability Acts legislate councils to produce Disability Action Plans with the intent to:

- reduce barriers to persons with a disability accessing goods, services and facilities
- reduce barriers to persons with a disability obtaining and maintaining employment
- promote inclusion and participation in the community of persons with a disability
- achieve tangible changes in attitudes and practices which discriminate against persons with a disability.<sup>17</sup>

The DDA determines local government's responsibility to provide accessible infrastructure to the community.

The Human Rights Charter sets out the basic rights, freedoms and responsibilities of all people in Victoria which all levels of government are to consider when developing policies, making laws, delivering services, and making decisions. It is less prescriptive about how to achieve its aims than the other Acts, but nevertheless supports the intent of the other Acts in relation to people with a disability.

In line with the Acts, the State government documents local government's responsibilities in the state Disability Plan 2017-2020. As of 2021, all local government Disability Action Plans must align with the state Disability Plan. Current priorities for the state government include accessibility of infrastructure and transport, responding to diverse communities (aboriginal, LGBTI, refugees and veterans), health promotion, housing, responding to dual disabilities and vulnerable children and families, transition to the NDIS, family violence, disability advocacy, inclusive education, improving employment, and improving the justice system.

Presuming these kinds of themes continue in the next iteration of State Disability Plan, local government's Disability Action Plans will mirror similar themes. It is unclear whether there is an expectation from the state government that local government will provide more resources to support what appears to be a significantly increased expansion of activities.

The 2015 Ministerial statement on Local Government outlines a 17 point action plan related to the Local Government Reform Agenda. Action 17 emphasizes the importance of councils strengthening local support for social inclusion. Specifically, the document acknowledges the important contribution councils can make to the inclusion of people with a disability in their local communities. It suggests that councils have a role in harmonising their current programs with the NDIS.

The Commonwealth has very little to say about local government responsibilities. In the Commonwealth's 2010-2020 National Disability Strategy, the document makes no reference to local government.

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<sup>17</sup> Local Government Act (1989) Part 4 – Section 38 (page 57)