



INDEPENDENT SCHOOLS  
COUNCIL OF AUSTRALIA

# Productivity Commission National Disability Insurance Scheme (NDIS) Costs Issues Paper Submission by The Independent Schools Council of Australia (ISCA)

## Introduction: About ISCA

ISCA is the national peak body representing the Independent schooling sector. It comprises the eight state and territory Associations of Independent Schools (AISs). Through these Associations, ISCA represents a sector with 1,104 schools and 594,200 students, accounting for approximately 16 per cent of Australian school enrolments. ISCA's major role is to bring the unique needs of Independent schools to the attention of the Australian Government and to represent the sector on national issues.

Independent schools are a diverse group of non-government schools serving a range of different communities. Many Independent schools provide a religious or values-based education. Others promote a particular educational philosophy or interpretation of mainstream education. Independent schools include:

- Schools affiliated with Christian denominations for example, Anglican, Catholic, Greek Orthodox, Lutheran, Uniting Church, Seventh Day Adventist and Presbyterian schools
- Non-denominational Christian schools
- Islamic schools
- Jewish schools
- Montessori schools
- Rudolf Steiner schools
- Schools constituted under specific Acts of Parliament, such as grammar schools in some states
- Community schools
- Indigenous community schools
- Schools that specialise in meeting the needs of students with disabilities
- Schools that cater for students at severe educational risk due to a range of social/emotional/behavioural and other risk factors.

Many Independent schools have been established by community groups seeking to meet particular needs. Examples include the Independent community schools for Indigenous

students in remote areas, special schools for students with disability and boarding schools to educate children from rural and remote areas. There are also schools that seek to reflect the religious values of a particular community or that seek to practise an internationally recognised educational philosophy such as Rudolf Steiner or Montessori schools. Independent Catholic schools are a significant part of the sector, accounting for eight per cent of the Independent sector's enrolments.

Most Independent schools are set up and governed independently on an individual school basis. However, some Independent schools with common aims and educational philosophies are governed and administered as systems, for example Lutheran systems. Systemic schools account for 18 per cent of schools in the Independent sector.

## Students with Disability in Independent Schools

The Independent Schools Council of Australia (ISCA) welcomes the opportunity to provide a submission in response to the Productivity Commission's National Disability Insurance Scheme (NDIS) Costs Issues Paper.

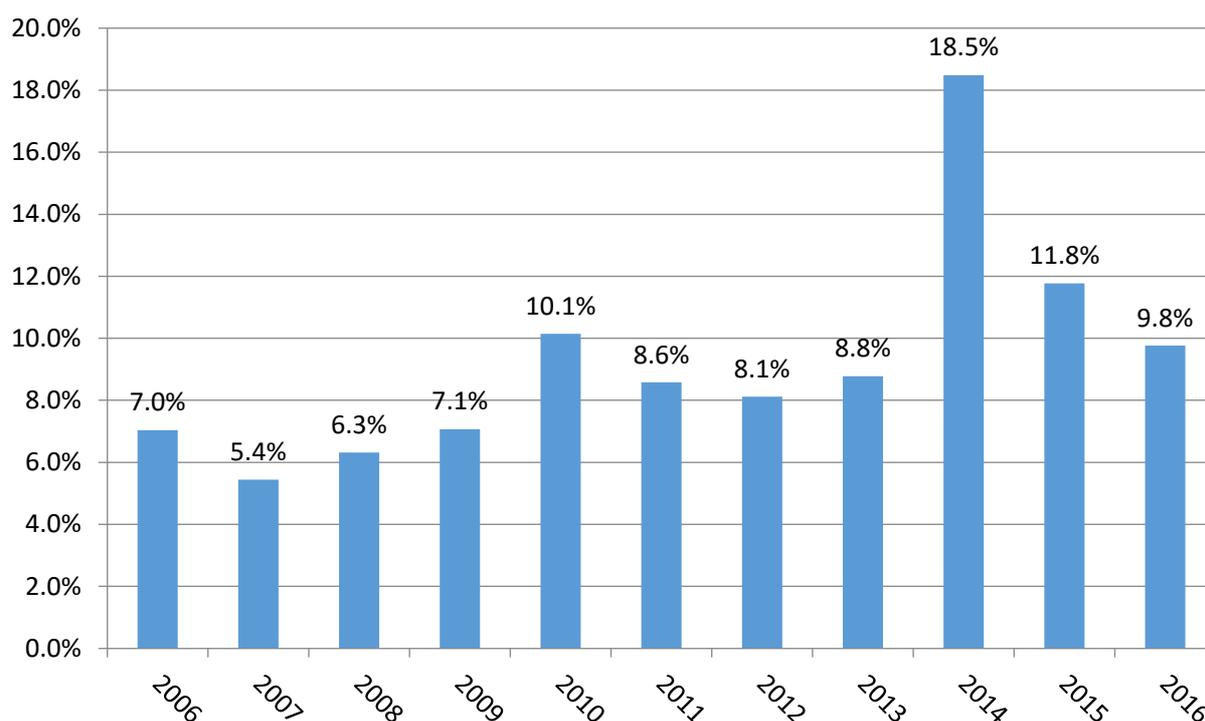
This submission focuses particularly on the section on pages 15-17 of the Issues Paper which addresses the intersection of the NDIS with other mainstream services.

### Growth in numbers

There were 21,530 students with disability enrolled in Independent schools in 2016, representing 3.6 per cent of the Independent school student population. This is more than double the number of students with disability enrolled in 2006.

The number of students with disability in the sector has grown substantially over the past decade, although the numbers vary from year to year.

**Chart 1: Growth in enrolments of student with disability in Independent schools, 2006 to 2016**



Source: Australian Government Department of Education and Training Non-Government School Census

In the Independent sector, most students with disability attend mainstream schools although more than 4,000 – about 19 per cent of the total – attend one of the 102 special schools in the sector. While this is consistent with the trend over recent decades to integrate students with disability into mainstream classrooms or special needs units in mainstream schools, parents

should be able to choose a non-mainstream educational environment if a special school is the best option for their child.

### **Special education provision**

Special schools, including Special Assistance Schools, provide alternative educational settings for students with high-level needs and cater for students with disability, as well as students who are at risk, have behavioural difficulties, or whose needs are better met by flexible learning structures that may not be available in all mainstream schools.

Special Assistance Schools make an important contribution to addressing educational disadvantage by catering for students with severe social, emotional and behavioural issues. Special Assistance Schools have developed specially adapted programs and structures designed to re-engage students in education and prepare them for further training and employment.

Some mainstream Independent schools incorporate a unit on campus to cater for students with a range of disabilities including profound hearing loss, severe language disorders, social and emotional disorders, or intellectual disability.

Many Independent schools employ specialist teachers to work with class teachers and parents to develop individual learning programs for students with learning difficulties and to assist class teachers develop strategies and materials to meet the needs of such students. Some schools employ teacher aides to work with students in class, or withdraw students from class to work with specialist teachers.

### **The Responsibility of Schools**

All schools have a legal obligation to provide access to and meet the needs of students with disability. The *Disability Discrimination Act 1992* and its associated Education Standards make it unlawful for schools to discriminate against a person on the grounds of disability, except in those circumstances where the enrolment of a student with disability would impose an unjustifiable hardship on the school.

Unjustifiable hardship depends on the particular facts of each case and therefore the precise legal obligations on schools can be unclear. The legislation and its associated education standards place open-ended obligations on schools. While this is aimed at prohibiting discrimination against students with disability, the costs faced by individual schools in taking on students with disability can be prohibitive. Unlike government or Catholic systemic schools, as autonomous entities most Independent schools cannot access support from a system authority to provide the additional resources needed. The bulk of additional costs fall on individual families and school communities.

### **Funding for Students with Disability**

Students with disability in Independent schools are eligible for funding from the Australian Government and state and territory governments, although students with disability in Independent schools do not received the same level of additional funding from governments as their counterparts in government schools.

The funding differential for students with special needs between school sectors can be substantial. For students with high level needs, the gap in funding can be over \$40,000 per student per year.

The new Schooling Resource Standard (SRS) funding model, in operation from 2014, includes a number of loadings to address specific areas of educational disadvantage, including disability. These loadings are to be fully publicly funded and if and when fully implemented, would theoretically provide the same amount for students with disability whether they attend government or non-government schools. This is unlikely to eventuate. Initially however, the loadings are subject to transition arrangements.

The current loading is an interim amount, and does not differentiate between levels of disability, nor will Independent schools have the same capacity as system authorities to respond flexibly and target funding to needs as they arise within the sector. Schools only receive the full student with disability loading when they are fully transitioned to the SRS model. Currently 72 per cent of Independent schools receive less government funding than their SRS funding entitlement.

Problems with the level of funding available for students with disability within the Independent school sector are compounded by inconsistencies in the definitions which determine eligibility for funding support in Australian Government and state and territory programs.

## Intersection of the NDIS with Education Services

The Independent school sector acknowledges that implementation and transition arrangements for the NDIS are at differing stages in jurisdictions across Australia. In some jurisdictions the implementation is still at a very early stage.

In some jurisdictions representatives from the state or territory Association of Independent Schools meet regularly with counterparts from the government and Catholic sectors to discuss implementation processes and other issues regarding the NDIS.

The Issues Paper makes it clear that the NDIS is intended to meet people's disability support needs, not to replace other mainstream services such as education. The intersection of NDIS services with education services provided by Independent schools has resulted in a range of issues being identified that concern the structure of the NDIS, and the way in which the NDIS is being implemented. In the main, these issues and concerns pertain to poorly defined boundaries, lack of clarity, and potential for overlap and gaps in the provision of services.

Schools in the Independent sector believe that the NDIS, once fully implemented, will undoubtedly be advantageous to students with disability. However, in these early stages, many schools are finding that the design and implementation of the NDIS is creating significant difficulties and imposts. Schools are spending many hours and substantial financial resources so that the NDIS can effectively interface with their existing educational services.

Some of the issues that schools have reported in this regard include:

- Parents are underprepared for the new arrangements. Consequently approximately 12-55 hours are currently required to support the parent or carers of each student with

disability to work through the documentation required and assist parents to prepare for the NDIS meeting.

- Parents require assistance to develop a framework for thinking about the needs of their child in all contexts including school, home and community. This can often be difficult for parents as they need to think beyond the current provision to consider future needs and requirements.
- Parents are often unsure where they can use their support package. Poorly defined boundaries between what the NDIS can provide and services that are currently provided by the school to students with disability results in confusion and frustration. Poorly defined boundaries and associated lack of clarity for parents and students will be further discussed below.
- Schools are allocating senior staff to assist parents throughout the planning process. Such dedicated support can obviously only be offered by experienced staff who work specifically with parents to help them understand current services and what the NDIS can provide.
- The current workload to implement the NDIS means that there is pressure on school staff to provide support after hours and on weekends to school students. This is growing as a consequence of parents being able to allocate funds. Schools are struggling under the weight of demand.
- Schools are having to take on more administration staff in order to cope with growing amounts of NDIS invoicing and other NDIS related paperwork.

Independent schools, like all other schools in Australia, have an obligation to enrol students with disability on the same basis as other students regardless of the level of supplementary assistance that may be available. This requirement is overseen by the *Disability Discrimination Act 1992 (DDA)* and its associated *Disability Standards for Education 2005*, in addition to state and territory-based legislation.

### **Funding of Students with Disability under the NDIS**

There is a misconception amongst many in government, bureaucracy, and the community that the NDIS will solve the chronic underfunding of students with disability, particularly in Independent schools. This misconception indicates that there is a particular need to improve understanding of the focus, role and limits of the NDIS.

As autonomous entities, most Independent schools cannot rely on support from a systemic school authority to provide additional resources to meet the needs of increasing numbers of students with special needs. Independent schools are not adequately resourced by governments to meet their legislated obligations which means the cost of meeting the special education needs of students with disability largely falls to individual families and school communities.

Funding under the NDIS is allocated directly to support individual needs so that the student with disability has the opportunity to exercise choice and control over the services and support they receive. This means that the student with disability and their parents or carers have independence and autonomy to determine how that funding will be allocated.

The current situation in which education is excluded from the NDIS and schools are required, under the DDA, to provide support regardless of whether funding is available, opens the possibility of cost-shifting on to schools. Since funding for students in schools is low relative to need, this could make it harder for schools to meet their requirements under the DDA.

### **Lack of Clear Boundaries**

The lack of clear boundaries between the NDIS and education related mainstream services has resulted in general concern regarding the interaction between NDIS services and schools. This includes issues such as access to NDIS services for students with disability from rural and remote communities enrolled in Independent schools, and whether Local Area Coordinators (LACs) have the required resources and knowledge to offer clear and reliable appropriate information to students, parents and schools.

Concerns about poorly defined boundaries and lack of clarity about purpose have also been raised in relation to specific topics such as the provision of personal care to students, the location in which services are provided, and transport for students with disability enrolled in schools in certain jurisdictions.

As the design of the NDIS explicitly excludes the costs of educating students with disability, the structure automatically creates the potential for overlap and gaps. The overlap between services provided to children because they have a disability (including the NDIS) and those services provided because they are a student attending a school remains unclear and undefined in many circumstances. This extremely problematic situation creates confusion for students, parents and carers, and schools. The confusion is further exacerbated by the lack of clear boundaries delineating services that are to be provided by schools and those that are to be delivered by NDIS service providers.

In many circumstances it appears that some NDIS services providers operate on the basis that they will have automatic access to schools. There can be pressure on schools to allow children to do therapy in school hours as most therapists want to work in school hours. This means that schools are conflicted as to their obligations and how best to integrate NDIS services within the school program and not rely on continual withdrawal of students from class. Schools also have specific requirements regarding working with children requirements, student protection, privacy and so on which must be met by these providers.

This situation is compounded in some jurisdictions, such as Queensland, where an existing program, the Non-School Organisations (NSO) Program is funded by the state government to support students with disability in schools. It is not unusual for NDIS services providers to assume that they will be able to expect a similar level of access to Independent schools as the NSO Program, despite the exclusion of education from the NDIS.

### **Personal Care and Therapy**

The issue of poorly defined boundaries comes to the fore with regard to the understanding of and provision of personal care and of therapy.

For example, the reality is that in many Queensland Independent schools, personal care is currently provided by the school itself or through the NSO Program. The Fact Sheets published

on the NDIS website, and often the expectations of NDIS services providers, appear to indicate that this situation will change over the implementation period and in the future NDIS providers will deliver these services in schools.

In circumstances where these services, such as therapy, are currently provided by the school, the school may need to become a registered NDIS provider if it is offering therapy as part of a school programme that is integrated and targeted in the school. Becoming a registered NDIS provider is a complex process and often expensive process. For schools to be an approved provider for services under NDIS, schools have to prepare and submit significant paperwork and then undergo an assessment. The cost of this process can be about \$10,000. It would be easier if schools received automatic recognition as registered and approved school providers.

In other jurisdictions, NDIS trials have established that services such as occupational therapy and speech therapy, can be covered – but only in circumstances where it can be shown that the child needs the therapy to participate in life, as distinct from requiring the therapy to participate in education (which is excluded from the NDIS). While Independent schools welcome and support any services that can assist students, the specific application of these criteria could result in students with disability getting different levels of funding from different sources for similar needs.

Further, the lack of clarity has resulted in questions relating to the location in which services provided under the NDIS can be delivered. In the circumstance mentioned above where students were deemed to be eligible to receive speech or occupational therapy, concerns were raised about whether these services could be provided within school grounds, due to the exclusion of education from the NDIS. In this particular case, the question was sensibly resolved by considering the most appropriate place for the therapy to be delivered; if this was within a school site, then the services would be provided at the school.

As noted earlier, there are access issues for students from rural and remote communities. It appears that there are circumstances where a student with disability is enrolled as a boarder in an Independent school and may be eligible to access NDIS services according to their home address. As they are boarding away from their home address the service is required at their school residence where they spend most of the year, and an appropriate service provider is unable to be accessed. Enabling boarding students to access services at their school residence rather than at their home address would facilitate the resolution of this significant issue.

## **Transport**

Transport to and from school for students with disability is another area where gaps in service provision may appear due to a lack of clarity in the design and/or implementation of the NDIS. Currently in some jurisdictions, transport to school for students with disability is facilitated and organised through a state or territory program.

In many of these jurisdictions it appears that transport for these students will be transitioning to the NDIS in the near future. Current advice from the National Disability Insurance Agency (NDIA) indicates that eligibility to access this transport assistance for students with disability may be determined without a 'grandfather' clause for students with disability currently supported. As it stands, there is no clear indication of the criteria to be used. In some circumstances, the families of school students will have a financial allocation for school transport made available. However,

it appears that this allocation is not reflective of the current costs of the transport provided by the government. The lack of clarity is causing enormous concern to students and their families.

Planning for the implementation of these new arrangements appears to stand in contrast to the guidance given on page 15 of the Issues Paper where transport is identified as a mainstream service that the NDIS is intended to support but not replace.

## Conclusion

The Independent Schools Council of Australia is pleased to have this opportunity to make a submission in response to the Productivity Commission's National Disability Insurance Scheme (NDIS) Costs Issues Paper.

These situations outlined above illustrate potential for gaps in services or duplication of services, and the resultant confusion for students, parents, schools and NDIS service providers, due to the overlap and lack of clear boundaries between NDIS and education services. Better defined boundaries in the design and implementation of the NDIS would aid in the clarification of services for student, parents, schools and NDIS providers and reduce the potential for confusion and frustration.

The Independent sector believes that, when fully implemented, the NDIS has the potential to benefit and improve the wellbeing of students with disability. In order to do so, the design and implementation of the NDIS needs to be addressed so that the NDIS can better intersect with education services currently provided by schools.

The Independent sector looks forward to continuing to work with students and their parents and carers, education providers, and governments to ensure that students with disability are able to access and participate in education on the same basis as other students.

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