nous group

National quality and safeguarding framework for the NDIS: Impact analysis report

Department of Social Services

4 March 2016

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Contents

Glossary

Term	Definition	Section
Activity	the inputs, outputs and outcomes relevant to any particular regulatory regime	1.3
Base case	how each jurisdiction currently regulates[1] to ensure quality and provide safeguards in the provision of disability services	2.2
Benefit	the outcomes that a particular option produces in addressing the core problem to which the overall regulatory intervention is responding	3.1
BSP	Behaviour Support Plan: plans implemented by providers to improve a participant's quality of life and reduce challenging behaviour	1.4.4
COAG	Council of Australian Government	
Complaints	the expression of dissatisfaction with a decision, service or product	1.4.1
Component	the specific variables that describe each aspect of a particular input or output that is to be assessed quantitatively	2.3
Cost	the burden of complying with particular regulation	3.1
CBA	Cost-benefit analysis, which includes the NPV calculations as well as qualitative assessments of relative costs and benefits.	2.3
Elements	the five aspects of the quality and safeguarding framework that are the subject of this RIS: complaints, employee vetting, provider registration, restrictive practices, self-managed participants	1.4
Formula	a mathematical description of the relationship between 2.3s, which is relevant to the quantitative assessment of a particular activity's impact	2.3
Impact	costs, benefits, risks and other impacts of each of the regulatory options	
Material (setup costs)	costs are material if they represent a significant addition to annual operational costs	2.3
Minor incident	any incident that is considered appropriate for a complaint, but which does not fall within the categories of assault, sexual assault, theft or neglect (i.e. serious incidents)	4.6
Model	a mathematical representation of the relationship between components, activities, and other variables that Nous will use to quantify the costs and benefits of individual options	2.3
NDIA	National Disability Insurance Agency	
NDIS	National Disability Insurance Scheme	

[1] For the purpose of this report, 'regulation' means "any rule endorsed by government where there is an expectation of compliance": see Department of Prime Minister and Cabinet (2014), *The Australian Government Guide to Regulation*, p. 3. The definition covers legislation, legislate instruments, mandatory requirements of funding agreements and mandatory codes of conduct.

Term	Definition	Section
Neglect	the failure to attend to a participant's basic needs (food, warmth, cleanliness and health), usually over a sustained period, to an extent that significantly endangers the participant's physical or mental health	1.2
NPV	Net Present Value: a way of calculating the benefits and costs of an investment over a given period	2.3
OBPR	Office of Best Practice Regulation	
Options	the different regulatory regimes (i.e. rules) that COAG is considering for each element	1.4
Participants	those people directly receiving payments under the NDIS, their carers and families	
Quality Assurance	any systematic process of checking to see whether a product or service being developed is meeting specified requirements.	1.4.3
Restrictive Practice	any intervention which restricts the freedom of movement of a person with a disability who displays challenging behaviours, where the primary purpose of that intervention is to protect that person or others from harm	1.4.4
RIS	Regulatory Impact Statement	
Risk	the likelihood and consequences of an undesirable event occurring	
RP	Restrictive Practice (see above)	1.4.4
Saving	a reduction in the costs that a regulatory regime currently imposes	3.1
SAE	Serious adverse events. These are events which threaten the safety of people or property including: • assault • sexual assault • neglect • theft and for the purposes of this analysis include allegations that such events have occurred.	1.2
Universal safeguards	the legal protections that exist for all citizens when they interact with business, non-government organisations or governments, including consumer protection law on products and services, state and territory public health legislation, building codes and the Criminal Code	2.2
WwC	Working with Children check	
WwVP	Working with Vulnerable People check	

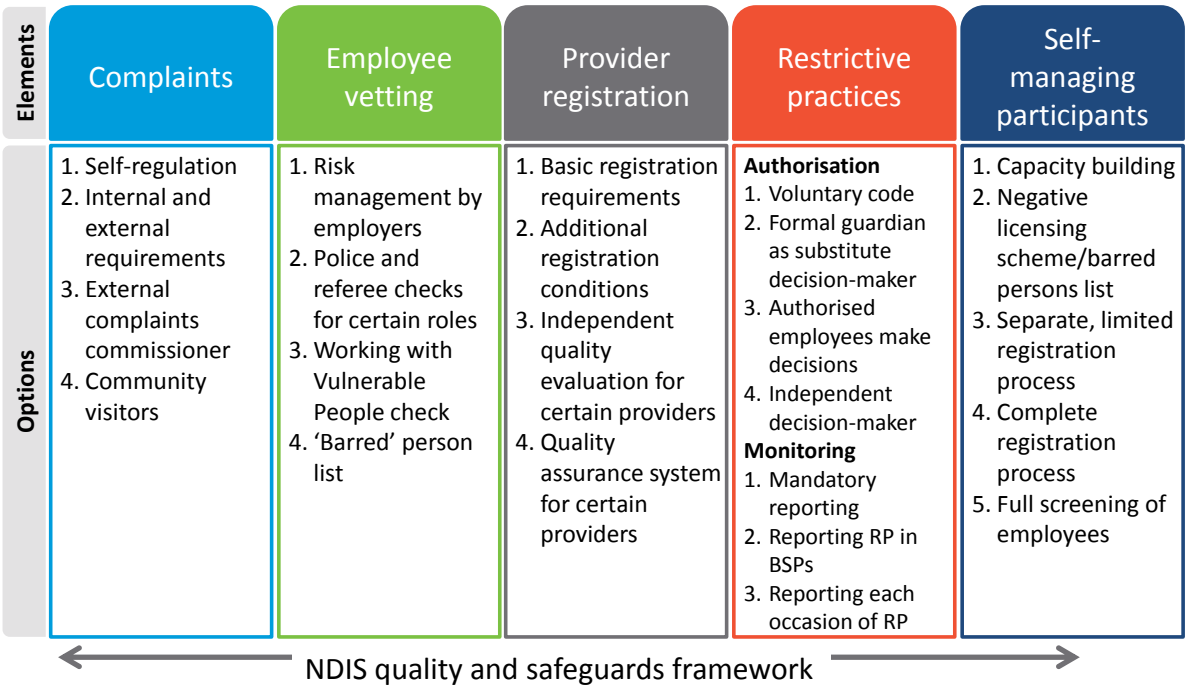
Executive summary

The Council of Australian Governments (COAG) agreed to a National Disability Insurance Scheme (NDIS) across Australia that will be fully rolled-out in all Australian State and Territories except Western Australia by July 2019.[2]

At present each jurisdiction has its own regulatory framework for disability services. Under the NDIS, there will need to be a nationally consistent set of regulations to ensure quality service provision and protect service receivers' (participants) interests.

Australian governments are developing a new Quality and Safeguarding Framework (the Framework) to assure quality in service provision and provide safeguards for participants[3] in the NDIS. Commonwealth, State, and Territory officials identified 24 separate regulatory options that seek to balance the interests of participants, providers, governments and others who have a stake in the regulation of disability services. These options sit across five elements of the proposed framework, as shown in Figure 1. In accordance with standard government practices, the options move from less government regulation (options 1 and 2) to more government regulation (options 3 and 4).

Figure 1: Summary of options assessed



[2] The ACT has begun to transition to the NDIS and will complete the implementation by July 2016 with 7,500 participants. The other States and Territories are scheduled to begin in July 2016 and to be completed as follows:

- New South Wales by July 2018 with 140,000 participants
- South Australia by July 2018 with 33,000 participants
- Tasmania by July 2019 with 11,000 participants
- Victoria by July 2019 with 110,000 participants
- Northern Territory by July 2019 with 7,000 participants
- Queensland by July 2019 with 97,000 participants

Western Australia has made no commitment to the full rollout of the NDIS.

[3] In this document, 'participant' means those people directly receiving payments under the NDIS, their carers and families.

The options comprise potential regulations to govern:

- the systems in place to document, investigate, and respond to **complaints**
- pre-**employment vetting** of applicants for employment
- the ways in which the quality of services are controlled through **provider registration** requirements
- processes to authorise, document and monitor **restrictive practices**[4]
- threshold requirements to provide services to **self-managing participants**.

The decision on which regulatory options to pursue will have implications for the degree of change that jurisdictions need to make, and will also have consequences for service providers and participants in the system.

In accordance with COAG requirements, consideration of the Framework requires preparation of a Regulatory Impact Statement (RIS) to inform government decision-making. As part of the RIS process, the Department of Social Services (DSS) engaged Nous Group (Nous) to help assess the impact of each regulatory option.

This report compares the relative impact of the different options on key stakeholder groups and across the States and Territories. 'Impact' is assessed in terms of costs, benefits, risks and impact on competition in the market. The findings are intended to inform COAG's final decision on the future design of the Framework.

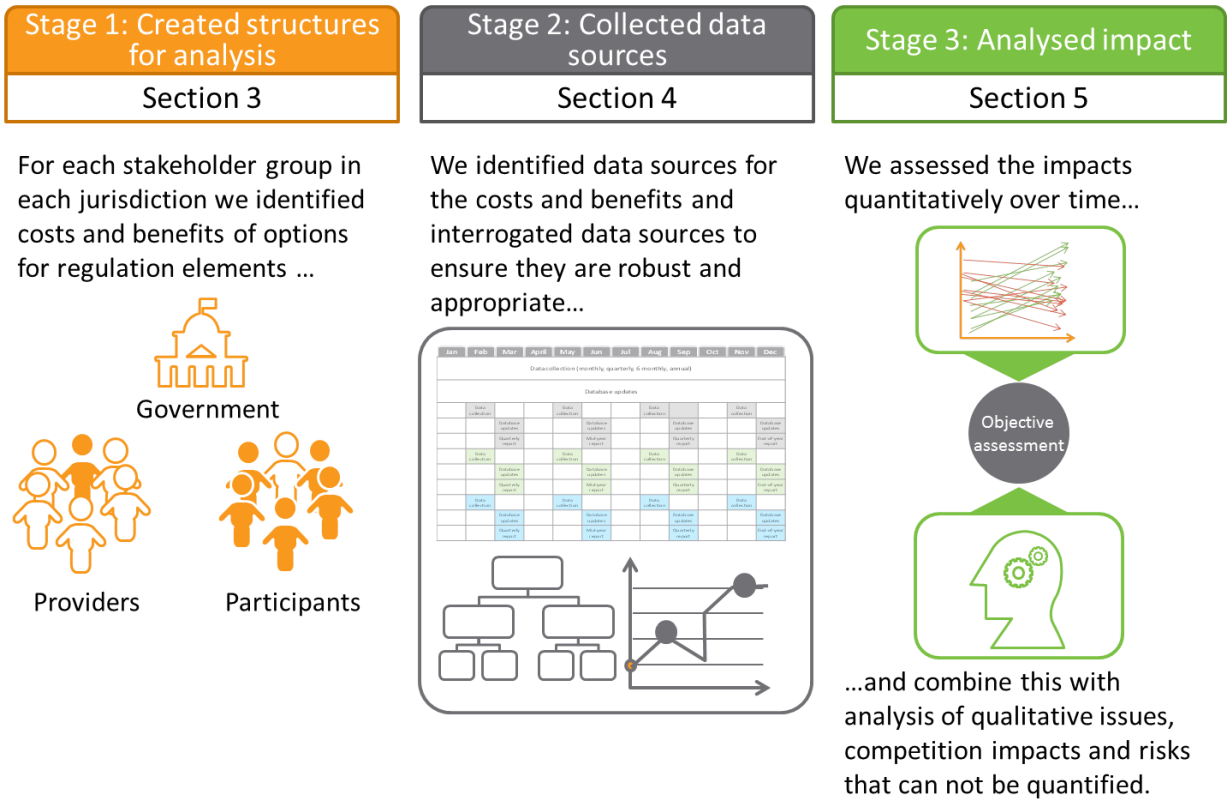
This work was done in three stages:

- In Stage 1, Nous developed cost-benefit formulae, a model to calculate the quantifiable impact and a data strategy to guide the collection of relevant data for the model. The model identifies the costs and benefits of each option for different stakeholder groups and is discussed in more detail in Section 2.3 of this report. Other data is relevant for the regulatory burden analysis, competition analysis and risk analysis. These analyses are discussed in more detail in Sections 2.4, 2.5, and 2.6.
- Stage 2 involved collecting, analysing and interrogating data sources necessary for the impact analysis. Nous gathered data from a survey of providers, administrative data from governments, publically available sources and expert opinion. Nous analysed this data to ensure it was robust and appropriate, and developed methodologies to address data gaps. The data we used is discussed in more detail in Section 3.
- In Stage 3, Nous undertook the cost-benefit analysis by applying the quantitative data obtained during Stage 2 to the cost-benefit model developed during Stage 1. We completed the impact analysis by applying the data to the risk analysis, regulatory burden analysis, and competition analysis. The results of these analyses are set out in Section 5.

These three stages and the corresponding Sections of the report are summarised in Figure 2 over.

[4] Restrictive practices is one element but it has two distinct parts – authorisation and monitoring – each with a set of regulatory Options.

Figure 2: Process for conducting the impact analysis



The impact analysis assesses the quantifiable and non-quantifiable impacts of each option

The impact analysis weighs each option's relative benefits and costs on business, community and individuals in a balanced and objective manner. It compares the options against each other and against the 'base case', which is the current regulatory regime in place in each State and Territory. There are five key aspects to the analysis, as follows:

1. **Base case analysis** – we start with an analysis of the current regulatory frameworks in each jurisdiction, which becomes the yardstick against which the final impact analysis is compared. Because the base case nationally is a conglomeration of the current regulatory regimes, it reflects varying levels of regulation. Some of the current regimes align with the 'lighter touch' options in the Framework, while others approximate the 'heavier' regulatory options. The cost-benefit analysis for each option provides a view of what national consistency would look like compared to the base case.
2. **Cost-benefit analysis** (CBA) – the CBA systematically evaluates the net benefit of each regulatory option by monetising the value of a safeguard or quality-control mechanism and translating this into a Net Present Value (NPV) figure. This enables relative assessment of the costs and benefits of each option over time (and against the NPV for the base case). The CBA also takes account of any qualitative measures of impact that cannot be monetised. We use the CBA to undertake a distribution analysis that shows how the costs and benefits are apportioned among the relevant stakeholders – in this case: participants, providers and government. This highlights any issues of equity by quantifying the impacts of proposed actions on different groups.

3. **Regulatory burden analysis** – quantifies the costs of current and proposed regulation that fall primarily on businesses. This quantification allows calculations of the degree to which new regulation adds to the regulatory burden, or is offset by reductions in existing regulation.
4. **Risk analysis** – places the impact analysis and the proposed regulation in perspective by investigating: the likelihood of relevant undesirable events occurring under the regulatory options; the consequences that would follow if such an event were to occur; and how much it will cost the community to reduce or eliminate the risk.
5. **Competition analysis** – assesses the degree to which the options would be likely to restrict competition, and therefore to restrict efforts to achieve efficiency and innovation. If significant reductions of competition are found to be likely, the competition analysis investigates the alternatives that are available and the social benefits that flow from each alternative.

Our analysis acknowledges the cumulative nature of regulation

It should not be assumed the options are mutually exclusive, even within a single element. Governments could – and have – deployed multiple interventions at once, to produce a regime of government intervention, where multiple options work together to reduce the loopholes and gaps that any single option leaves open. In particular, the options in the employee vetting and provider registration elements that do not involve self-regulation could all be deployed simultaneously.

To illustrate this point, Table 1 sets out the relationships between options in the employee vetting element. These relationships are important, because they help us understand how governments might develop a regulatory regime, and how to calculate the overall benefits from such a regime.

Table 1: Relationship between options in the employee vetting element

Option	1: Employer risk management	2: Checks for high-risk roles	3: Working with Vulnerable People clearances	4: 'Barred' persons list
1: Employer risk management	-	X	X	X
2: Checks for high-risk roles	X	-	En	✓
3: Working with Vulnerable People clearances	X	En	-	✓
4: 'Barred' persons list	X	✓	✓	-

✓ = **Options** compatible; X = **Options** mutually exclusive; – = same option;
En = **Options** with greater government intervention encompass options with less government intervention

As noted above, our analysis acknowledges the cumulative nature of regulation and the fact that the base case is a combination of regulatory options that reflect what currently prevails nationally in Australia. Nous has therefore considered:

- the costs and benefits of an individual option – noting that the costs and benefits of the base case are likely to dwarf any individual option
- how individual options might operate together – to create the optimal regime for minimising the risk of harm, and advancing the rights of people with a disability.

The analysis draws on data from a variety of sources

Nous sought and received information from the following sources:

- Every State and Territory government provided access to internal administrative data and directed our attention to various matters on public record to understand government outputs and expenses.
- Nous received 289 responses from disability service providers to two surveys aimed at understanding the providers' general experiences and views in relation to the relevant elements, and the time and expense that providers incur when complying with current regulatory regimes.
- Experts, including Disability Service Commissioners, Senior Practitioners, disability services providers and consumer advocates agreed to discuss the challenges of disability service provision, as well as the issues facing regulation in this area. Discussions took place at roundtables, through online engagement (using the MindHive platform) and in one-on-one interviews.
- Nous conducted extensive research of publicly available data and research, including academic literature and publications from the Australian Bureau of Statistics, Australian Institute of Criminology and National Disability Services.

We have addressed gaps and weaknesses in the data to produce a robust model

Generally-speaking, there are four issues that compromise our ability to provide definitive or robust conclusions:

1. **Different definitions** – respondents to surveys interpret things in different ways. Although we define terms, different governments use their methods for recording information which means that we cannot be certain that we are comparing like with like.
2. **Different application and oversight of rules** – States and Territories often issue procedural guidelines or contractual requirements that, in effect, raise the standards expected of providers. They can also, through their oversight functions, create expectations of higher-than-minimum-standard performance. This means that the regulatory base case may in fact be lower than the regulatory floor that applies in practice.
3. **Relationship between data and measures** – the inferences drawn from data can vary according to the context in which the measurement is being made. A government might set targets to reduce the number of complaints, for example, as a proxy indicator of improved satisfaction. However, as noted above, an increase in complaints may be a positive indicator because it shows a willingness to engage with review mechanisms. This makes it difficult to be definitive about how data should be interpreted.
4. **Recent regulation** – another challenge for this analysis is that some regulatory changes are very recent, so it is difficult to assess their impact in a meaningful way. The recent regulation creating Woking with Vulnerable People (WwVP) checks is a good example of this: the regulation is so new that providers are still working out how to adapt to it, so it will take some time to determine its ongoing effect.

The data on costs is largely robust and unambiguous, so the analysis of these is comparatively straightforward. It is more difficult to analyse (and quantify) benefits, but we have adopted a logical

approach, grounded in evidence or expert opinion, to enable a reasonable interpretation of overall impacts.[5] This has involved developing some assumptions. For example:

- We have acknowledged that **many issues besides regulation motivate and assist providers to deliver quality services**. Other forces (including personal ethics, a desire for competitive advantage and the wish to avoid liability) will push providers to voluntarily undertake actions similar to those that the regulatory options mandate. For this reason, when evaluating the costs of regulation, Nous distinguishes the activities that are undertaken as a response to the proposed regulatory options from the activities that would be undertaken in any case.
- We have obtained the **rate of serious adverse events (SAEs) in the base case** by assuming that the States' and Territories' current regulatory regimes are sufficiently similar in their combination of formal regulation (i.e. empowered by statute) and informal regulation (i.e. related to administrative or contractual guidelines), to allow analysis using all jurisdictions' data. We have adjusted this rate of reported SAEs to account for the underreporting of crimes against people with disability.[6]
- The **different elements will not all affect every type of SAE** and will not do so to the same extent. For example, measures to regulate the use of restrictive practices will affect assault of participants or bystanders, but will not affect sexual assault rates to the same extent, and will not theft or neglect at all. The impact analysis for each element therefore only evaluates the benefits that each element has the potential to affect. This is set out in Table 2.

Table 2: Relationship between elements and reductions in SAE rates

	Is there a potential effect to evaluate?				
	Complaints & Oversight	Employee vetting	Provider Registration	Restrictive practices	Self-managing participants
Assault	Yes	Yes	Yes	Yes	Yes
Sexual assault	Yes	Yes	Yes	Yes	Yes
Neglect	Yes	No	Yes	No	Yes
Theft	Yes	Yes	Yes	No	Yes
Unsatisfactory service	Yes	No	Yes	Yes	Yes

As long as these assumptions are employed consistently, we can defensibly identify and calculate the relative impact of each option within each element, and across the different stakeholder groups.

Key findings - general

The key overarching points that emerge from the impact analysis are as follows:

- Delivering an improved system will impose a cost burden on providers and government. For providers, these costs involve compliance with each option's requirements. For governments, these costs are associated with administering the options. Both sets of costs are immediate and concrete, but they are greatly overshadowed by the (admittedly more contingent and ephemeral) benefits associated with avoiding SAEs. To illustrate the value of these benefits, a 1%

[5] See section 3.
[6] See section 4.1.

reduction in the incidence of SAEs over a 20 year period delivers benefits totalling $199 million in NPV terms.

- Providers generally consider that each of the Framework's proposed main interventions – including quality assurance frameworks, employee vetting, disability complaints offices and community visitors – are helpful and improve the quality of their services. There is also significant support for active government intervention to give providers the resources they need to reduce the frequency with which they use restrictive practices.
- Each of the States and Territories has already implemented substantial regulatory regimes with which providers must comply. Moving to an alternative national regime allows for the potential elimination and consolidation of existing regulation, which in turn provides a clear opportunity to offset some or the entire regulatory burden that the Framework creates. This is evident in the comparisons between the NPVs for the options and for the base cases.
- Based on our modelling of the costs and benefits of individual options, options within several elements could be combined to deliver higher NPVs than any individual option. As noted above, however, the possibility of combining options in some elements is limited due to the fact that these other elements' options are mutually exclusive.[7]

Key findings – specific elements

The six pages that appear at the end of this executive summary are one-page overviews[8] – two for the two sets of options relating to restrictive practices, and one for each of the remaining four elements. These bring together the main conclusions of each aspect of the impact the analysis, including the results of the modelling process described above. The one-page summaries are preceded by a guide on how to interpret the information on the one-page summaries.

To briefly summarise the results of the analysis:

- **Complaints and oversight** mechanisms focus attention on areas of dissatisfaction. These mechanisms have broad benefits, which are generally indirect and so do not appear explicitly in CBA results. The potential for extra complaints, and the need to redress those complaints, imposes costs on government and on providers. The costs of redress exceed the benefits of redress. This is necessary for deterrence: redress does not occur in all circumstances, so deterrence will only occur if the costs of redress are substantially greater than the 'benefits' providers receive by failing to manage complaints optimally.

  CBA calculations of the base case produce a negative NPV of -$8.8 billion over 20 years, although this amounts to a regulatory burden of $37.5 million per annum. The regulatory burden of the options varies between $9.9 million (Option 1) and $52.8 million per annum (Option 4). Given the indirect benefits that complaints mechanisms produce, it is inappropriate in our view to attempt to maximise NPV for this element.
- **Employee vetting** mechanisms proactively work to prevent predatory behaviour. They do not produce redress costs, and achieve benefits by reducing assault, sexual assault and theft. The costs of employee benefits accumulate through applying for and processing criminal records checks and WwVP checks. Costs of potential employees' applications are borne by providers and potential employees, who pay the application fee. Costs of volunteers' applications are predominantly borne by government, which does not seek cost neutrality for these applications.

[7] This issue is discussed further at section 2.2.

[8] Note that due to rounding - consistently rounded down to two degrees of significance - some of the NPVs broken down by stakeholder and/or jurisdiction do not exactly add up to the total NPV

CBA calculations of the base case produce a positive NPV of $3.44 billion. It is possible to maximise NPV by combining Option 2 and Option 3 which produces a NPV of $8.91 billion. The regulatory burden for the base case is $22.68 million and the burden for combining Option 2 and Option 3 amounts to $4.22 million.

- **Provider registration** mechanisms similarly reflect a proactive approach to reducing harm, and produce benefits in the form of a reduced number of SAEs. This analysis draws a clear distinction between complaints mechanisms and the provider registration processes, even though some aspects of the provider registration might require the establishment or audit of complaints mechanisms. Therefore, there is no assumed relationship between provider registration and redress for SAEs.

  The analysis assumes that governments will pass the costs of audits (Option 3 and Option 4) on to providers, in order to maintain cost neutrality.

  Given these parameters, CBA calculations of the base case produce a positive NPV of $1.82 billion, which involves an annual regulatory burden of $4.25 million. It is possible to maximise NPV by combining Option 3 and Option 4, which produces an NPV of $2.3 billion. The regulatory burden of this combination amounts to $120 million; the difference is due to a significant increase in the number of external audits that providers would undergo.

- **Authorisation of restrictive practices** primarily affects residential disability services, where (in Australia) 25% of residents experience restrictive practices. Given this smaller population, the monetised value of the CBA is measured in the millions rather than billions. This element is proactive, and primarily works to reduce inappropriate assaults and sexual assaults. The primary costs are those imposed on providers.

  CBA calculations of the base case produce a negative NPV of -$127.5 million, most of which is compliance costs that providers incur. The base case creates an annual regulatory burden of $21.52 million. The NPVs for the other options range between -$112 million (Option 1) and $24 million (Option 3). The NPV for Option 3 is larger than the NPV for Option 4 because Option 4 – while more effective in reducing restrictive practices – imposes significant additional costs on government that Option 3 avoids. The annual regulatory burden for Option 4 is $2.24 million.

- **Monitoring of restrictive practices** improves redress for inappropriate use of restrictive practices, and similarly applies only to part of the participant population. These options impose costs on providers and government, and generate benefits for participants.

  CBA calculations of the base case produce a positive NPV of $3.2 million, with a regulatory burden of $3.19 million per annum. Option 3 generates the highest NPV of $441 million, and involves a regulatory burden of $6.4 million.

- **Self-managing participants** are assumed to amount to approximately 6% of the total participant population. For those options that extend regulatory interventions to self-managing participants, CBA calculations relate to the marginal costs and benefits that accrue. For example, providers' costs will only relate to those providers who are exclusively servicing this participant group.

  This is a new intervention, so there is no base case and no CBA calculations are possible. We can nevertheless conclude that it is possible to maximise NPV by combining Option 1, Option 2b and Option 3a. This combination yields a total NPV of $358.5 million. The total (additional) regulatory burden of this combination is $2.69 million.

HOW TO READ THE SUMMARIES

Problem statement and risk analysis

The Problem Statement sets out the issues that the government is seeking to address when it regulates in this area.

The risk analysis provides brief insights into the scale of the issue, and the effect that the issue has on the Australian population generally, and NDIS participants in particular. This provides readers with an opportunity to judge whether the proposed interventions are proportionate to the size of the risk.

Jurisdictional map – current state

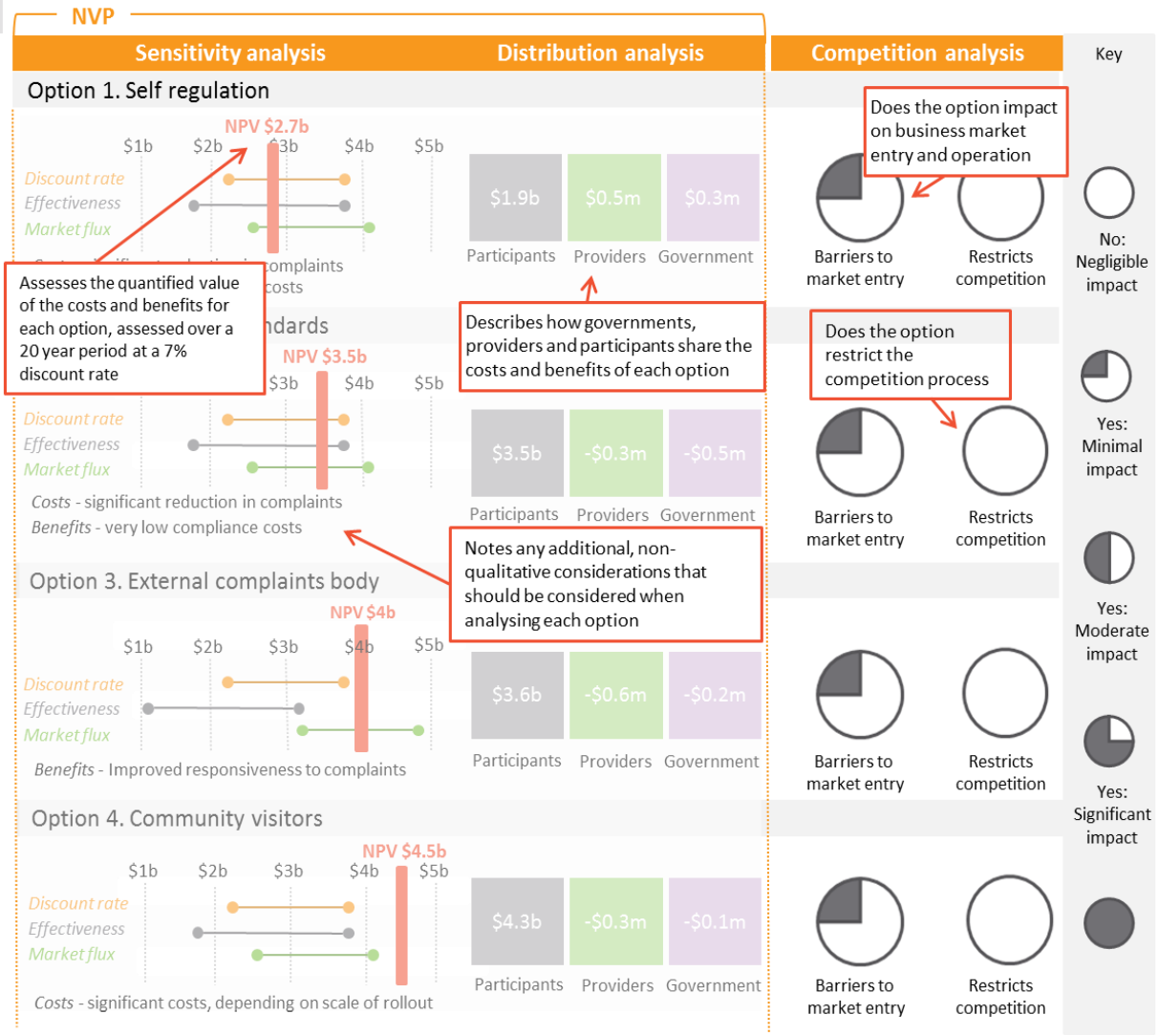
This map illustrates the relationship between current regulatory regimes that State and Territory governments have in place, and the options that are considered in this impact analysis.

The jurisdictional map focuses on formal regulation (legislation and legislative instruments), rather than on informal regulation (such as rules that jurisdictions have adopted when tendering out the delivery of disability services).

Relationship between options

This table explains the degree to which the different regulatory options are complementary:

- **Compatible** options can be implemented at the same time
- **Mutually exclusive** options cannot be implemented simultaneously
- **Encompassing** options exist where delivery of a higher numbered option includes all of the aspects of a lower numbered option.

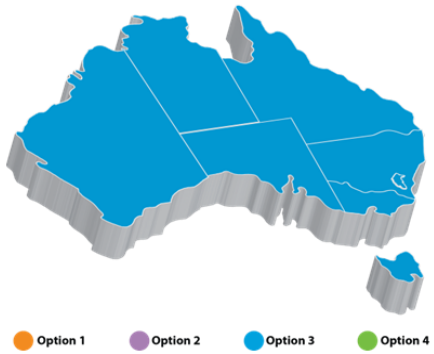


Complaints and oversight

Problem statement and risk analysis

Complaint mechanisms address participants' potential disempowerment by ensuring a robust and responsive complaints procedure.
Government intervention may address the risk that providers operate without an effective complaints process, and increase participant confidence in the integrity of the complaints process.
The rate of complaints to external bodies varies between the jurisdictions, from 0.01% per year to 0.93%.

Jurisdictional map – current state



Relationship between options

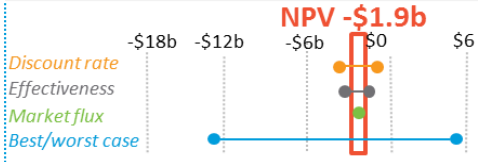
Option	1	2	3	4
1. Self-Regulation	-	X	X	X
2. Internal & External Reqts	X	-	X	✓
3. Independent complaints function	X	X	X	✓
4. Community visitors	X	✓	✓	✓

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

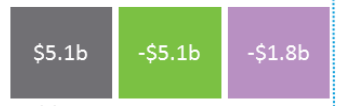
NVP

Sensitivity analysis	Distribution analysis	Competition analysis	Key

Option 1. Self regulation

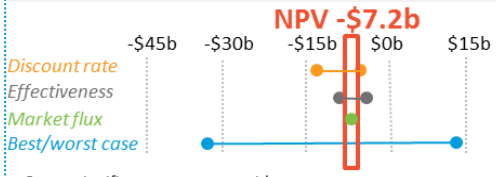


Costs – very small reduction of SAEs
Benefits - very low compliance costs

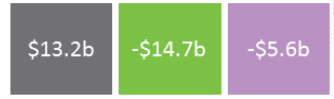


No: Negligible impact

Option 2. Internal and external requirements

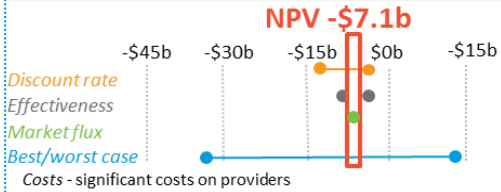


Costs - significant costs on providers
Benefits – strong reduction of SAEs

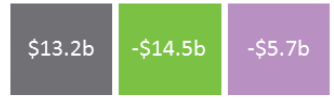


Yes: Minimal impact

Option 3. Independent statutory complaints function

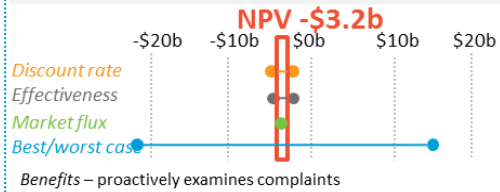


Costs - significant costs on providers
Benefits – strong reduction of SAEs

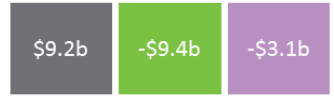


Yes: Moderate impact

Option 4. Community visitors



Benefits – proactively examines complaints



Yes: Significant impact

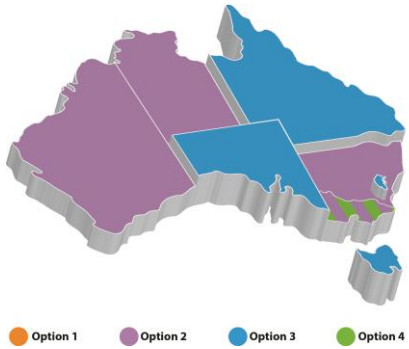
Yes: Extreme impact

Employee Vetting

Problem statement and risk analysis

Regulations to promote or require the vetting of employees are designed to address the risk that participants become subject to exploitative or abuse behaviour from those providing a service. They can also work to prevent other providers from engaging employees who are known to have behaved in an unacceptable (if not necessarily criminal) manner. All jurisdictions currently require, at minimum , background checks on employees likely to be working in high-risk roles. Providers often undertake further checks in addition to what is formally required.

Jurisdictional map – current state



Relationship between options

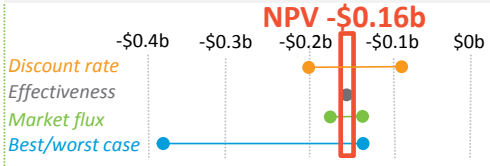
Option	1	2	3	4
1. Employer Risk Mgmt	-	X	X	X
2. Checks for high risk roles	X	-	En	✓
3. Working Vulnerable People clearances	X	En	-	✓
4. Barred persons list	X	✓	✓	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

NVP

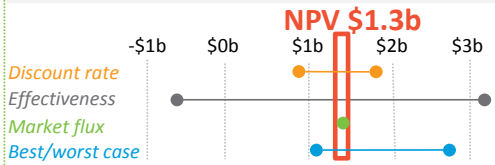
Sensitivity analysis

Option 1. Employer risk management



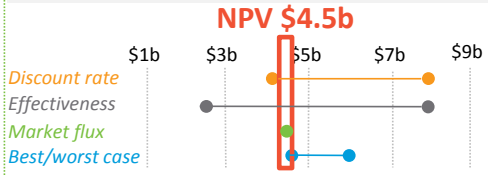
Costs – significant variation between employers
Benefits - very low compliance costs

Option 2. Checks for high risk roles



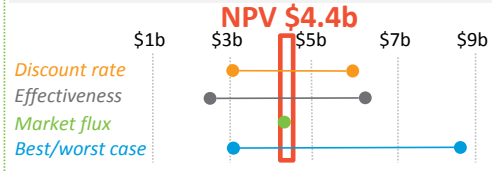
Costs – potential employees will bear costs
Benefits - very low compliance costs

Option 3. Working with Vulnerable People clearances



Costs – process's overall finding is not tailored to any job
Benefits – centralises compliance process

Option 4. 'Barred' persons list



Costs – employees may not be afforded procedural fairness

Distribution analysis

	Participants	Providers	Government
Option 1	$0b	-$0.1b	$0b
Option 2	$0.3b	$0.6b	$0.5b
Option 3	$0.8b	$2.3b	$1.4b
Option 4	$0.8b	$2.3m	$1.4b

Competition analysis

Key


No: Negligible impact


Yes: Minimal impact


Yes: Moderate impact


Yes: Significant impact

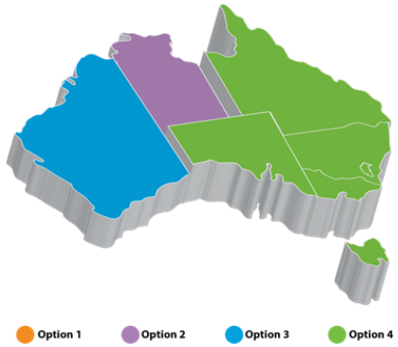

Yes: Extreme impact

Provider registration

Problem statement and risk analysis

The intent of provider registration requirements is to minimise the risk of poor-quality providers operating in the market. The risk is mitigated by requiring providers to demonstrate their bona fides as businesses and their capacity and capability to deliver the necessary services. Such regulations can also have the effect of delivering more information into the market to inform participants' choice. A balance of regulation is required to ensure that provider registration does not generate a separate risk of creating duplication and inefficiency. There are around 2,000 providers currently.

Jurisdictional map – current state



Relationship between options

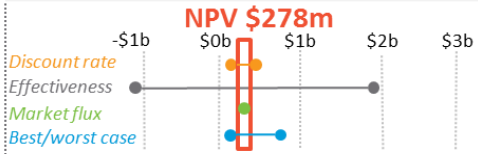
Option	1	2	3	4
1: Basic registration requirements	-	En	En	En
2: Additional registration conditions	En	-	En	En
3: Mandated independent quality evaluation	En	En	-	En
4: Mandated quality assurance system	En	En	En	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

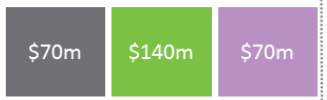
NVP

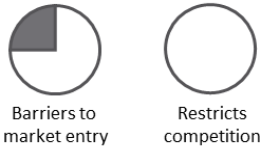
Sensitivity analysis	Distribution analysis	Competition analysis	Key

Option 1. Basic registration requirements



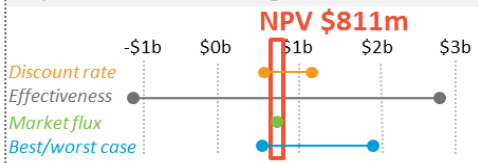
Costs – little effect on avoiding SAEs
Benefits - very low compliance costs



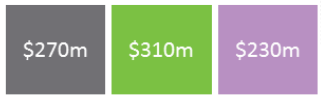


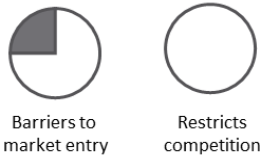
No: Negligible impact

Option 2. Additional registration conditions



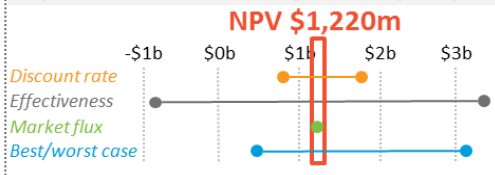
Costs – compliance costs proportionate to risk
Benefits – improves avoidance of SAEs



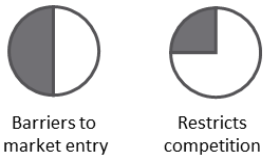


Yes: Minimal impact

Option 3. Mandated independent quality evaluation



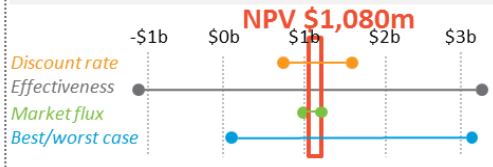
Benefits – providers strongly approve of these evaluations



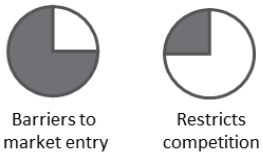
Yes: Moderate impact

Yes: Significant impact

Option 4. Mandated participation in an external quality assurance system



Costs - significant costs, depending on scale of rollout



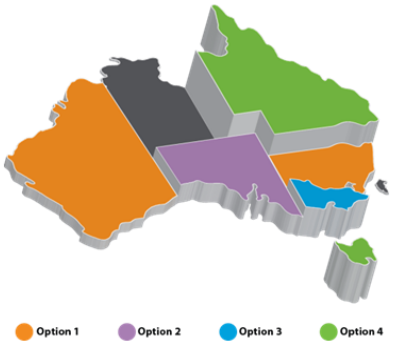
Yes: Extreme impact

Restrictive practices - authorisation

Problem statement and risk analysis

Restrictive practices can be physically and/or psychologically harmful to participantsand can represent a breach of human rights. it is therefore Australian Government policy to reduce their use. Current rates are relatively high, with 23-28% of residential care facilities using restrictive practices. Regulation relating to the authorisation of their use seeks to ensure that restrictive practices are used only a last resort, and to enable participants have a say in their potential use through involvement in the development of Behaviour Support Plans.

Jurisdictional map – current state



Relationship between options

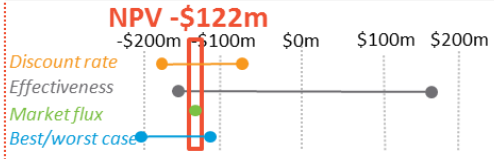
Option	1	2	3	4
1. Voluntary code	-	X	X	X
2. Formally appointed guardian	X	-	X	X
3. Providers authorised	X	X	-	X
4. Independent decision maker	X	X	X	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

NVP

Sensitivity analysis	Distribution analysis	Competition analysis	Key

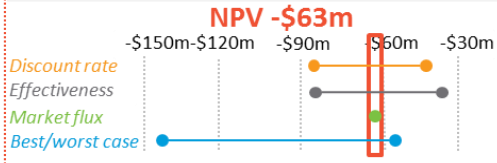
Option 1. Voluntary code of practice



Participants	Providers	Government
$1.9m	-$116m	$1.6m

Costs – may result in low compliance
Benefits - very low compliance costs

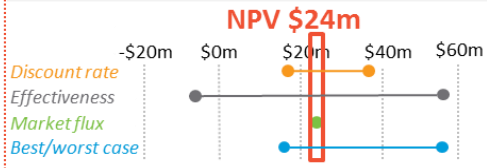
Option 2. Substitute decision makers are formally appointed guardian



Participants	Providers	Government
$4.8m	-$72m	$2.8m

Costs – guardians' capacity to discuss BSPs productively will vary
Benefits - greater insight into participant's behaviours

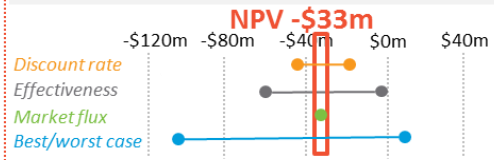
Option 3. Providers authorised to make decisions under specific conditions



Participants	Providers	Government
$9.6m	$7.3m	$4.9m

Benefits – Reduces costs

Option 4. Authorisation only by independent decision maker



Participants	Providers	Government
$12.8m	$5.9m	-$51.5m

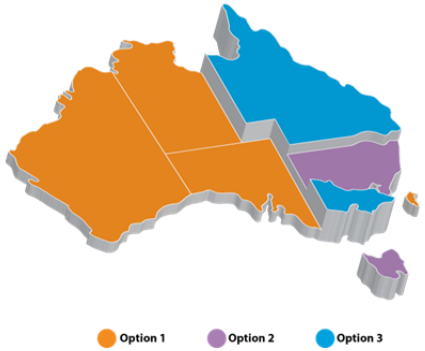
Costs - significant costs, depending on scale of rollout
Benefits – very strong effect on compliance

Restrictive practices - monitoring

Problem statement and risk analysis

Requirements to monitor the use of restrictive practices relate to the risk of their inappropriate or over-use. Research shows that effective monitoring can reduce the use of restrictive practices.
Regulatory requirements seek to ensure that decision makers are accountable for decisions to use restrictive practices, and to create information at the individual and system levels that can inform improvements to services delivered to participants.
Monitoring is currently done in all jurisdictions but with varying degrees of coverage.

Jurisdictional map – current state



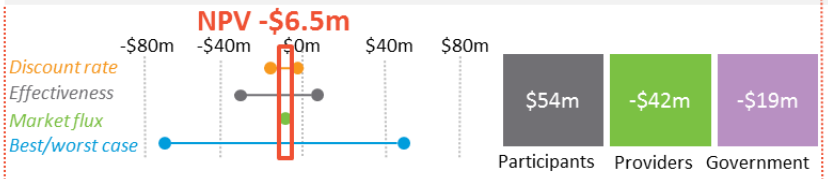
Relationship between options

Option	1	2	3
1. Mandatory reporting emergency use	-	En	En
2. Notification in behaviour support plan	En	-	En
3. Reporting each occasion of non routine practice	En	En	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

NVP

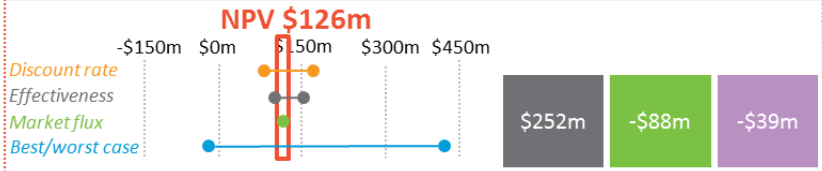
Option 1. Mandatory reporting of emergency use



Barriers to market entry: 

Restricts competition: 

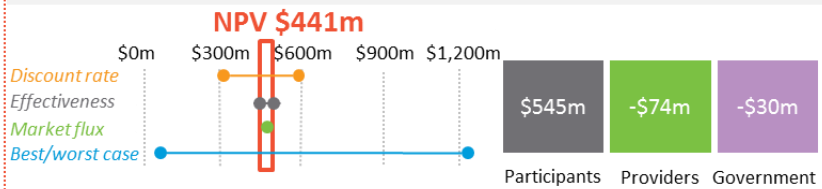
Option 2. Notification of inclusion of restrictive practice in behaviour support plans



Barriers to market entry: 

Restricts competition: 

Option 3. Reporting each occasion of non-routine restrictive practice



Barriers to market entry: 

Restricts competition: 

Competition analysis

Key

No: Negligible impact: 

Yes: Minimal impact: 

Yes: Moderate impact: 

Yes: Significant impact: 

Yes: Extreme impact: 

Self managing participants

Problem statement and risk analysis

An average of 4% of participants nationally are managing their own funding and exercising greater control over purchasing their own services. However, this a relatively new trend and there is minimal or no specific regulation to support such self-managing participants or govern the providers who support them. There is a risk to self-managing participants of receiving low-quality service, or of suffering a serious incident. The options are designed to empower self-managing NDIS participants to manage such risks by giving the access to some of the protections that are available to other participants under the Framework.

Jurisdictional map – current state

No jurisdictional scan is appropriate for this element, as it constitutes a new area of regulation.

Relationship between options

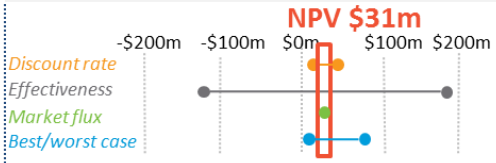
Option	1	2a	2b	3a	3b	3c
1. Building capacity	-	X	X	X	X	X
2a. Negative licensing scheme	X	-	En	✓	✓	✓
2b. Barred persons	X	En	-	X	✓	✓
3a. Limited registration	X	✓	✓	-	En	En
3b. Complete registration	X	✓	✓	En	-	X
3c. Full screening	X	✓	✓	En	X	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

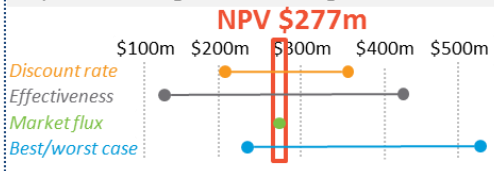
NVP

Sensitivity analysis	Distribution analysis	Competition analysis

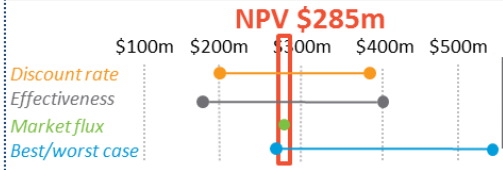
Option 1. Building participant's capacity

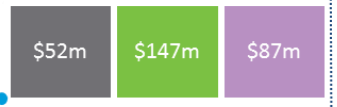


Option 2a. Negative licensing scheme

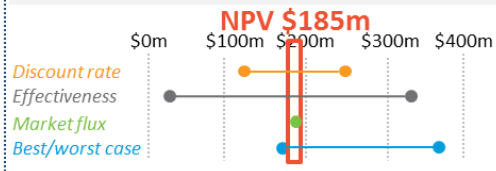


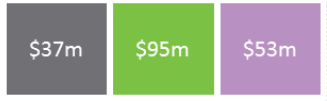
Option 2b. Barred persons scheme





Option 3a. Separate but limited registration process





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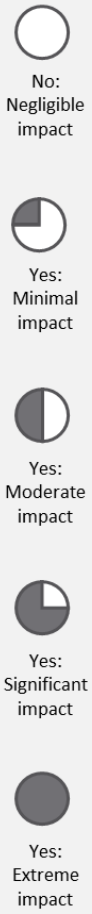


Self managing participants

Problem statement and risk analysis

An average of 4% of participants nationally are managing their own funding and exercising greater control over purchasing their own services. However, this a relatively new trend and there is minimal or no specific regulation to support such self-managing participants or govern the providers who support them. There is a risk to self-managing participants of receiving low-quality service, or of suffering a serious incident. The options are designed to empower self-managing NDIS participants to manage such risks by giving the access to some of the protections that are available to other participants under the Framework

Jurisdictional map – current state

No jurisdictional scan is appropriate for this element, as it constitutes a new area of regulation.

Relationship between options

Option	1	2a	2b	3a	3b	3c
1. Building capacity	-	X	X	X	X	X
2a. Negative licensing scheme	X	-	En	✓	✓	✓
2b. Barred persons	X	En	-	X	✓	✓
3a. Limited registration	X	✓	✓	-	En	En
3b. Complete registration	X	✓	✓	En	-	X
3c. Full screening	X	✓	✓	En	X	-

✓ = options compatible; X = options mutually exclusive; - = same option; En = options with greater govt intervention encompass options with less govt intervention

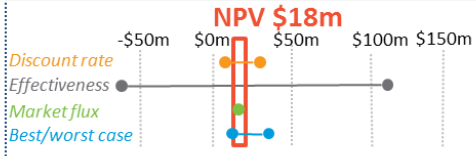
NVP

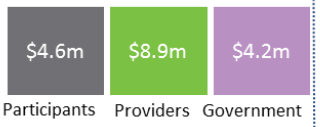
Sensitivity analysis

Distribution analysis

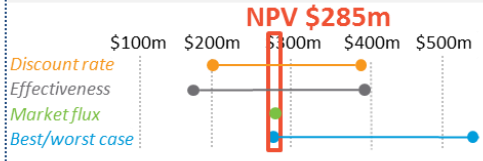
Competition analysis

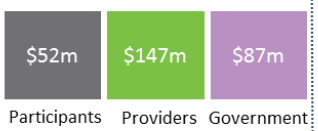
Option 3b. Complete registration for all providers

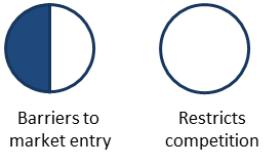




Option 3c. Full screening of all employees







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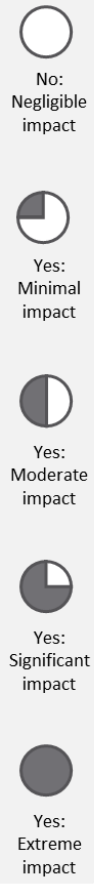


1 Problem statement and risk analysis across the five elements

Historically, governments have been responsible for funding disability services and checking the quality of those services. The NDIS empowers participants to decide what services they wish to receive, but also requires them to identify and respond to any unsatisfactory or inappropriate service delivery. The Framework therefore must secure participants' rights and minimise the risk of harm while maximising the choice and control that participants have over their lives. It is particularly important that the Framework be designed carefully, given that NDIS participants form a relatively vulnerable group.

This section places the Framework in its broader context by setting out the potential for market failure to occur across the disability services market and the risks that this presents to NDIS participants. This section also provides an overview of each individual regulatory option. Specifically, this section considers, in turn, the following points:

- The disability sector is large and about to undergo significant change.
- There are risks of harm and of poor quality services to be addressed.
- Regulatory responses can take various forms.
- Options in the Framework are intended to address risks across five elements, which potentially have a significant regulatory impact.

1.1 The disability sector is large and about to undergo significant change

In 2012/13 there were 2,151 organisations in Australia assisting people with disability in relation to employment, accommodation, independent living, education and social participation.[9] These organisations supported a total of 312,539 individuals, and employed an average of 27 FTE employees per organisation. Government service providers comprised 12% of the sector, and non-income tax exempt organisations comprised 10% of the sector, with the remainder of the sector being deductible gift recipients. Approximately 100,000 people worked in the disability sector in 2013.[10] This constitutes a 39% increase in the period between the 2006 and 2011 census.

The NDIS will change the structure and size of the disability sector. Currently, governments fund disability service providers via 'block contracts'[11], and deliver services themselves where there are few or no viable providers. As a result, governments determine the quality and price of supports provided to people with a disability. Even where there is no formal government regulation, safety and quality standards are usually incorporated as mandatory terms of the block contracts that the providers sign.

Under the NDIS, funding will be allocated to the participant, and the participant (or the participant's guardian or nominee) will choose who will provide support and how, when and where the support is to

[9] National Disability Services (2014), *State of the Disability Sector 2014*, p. 3.
[10] National Disability Services (2014), *State of the Disability Sector 2014*, p. 43.
[11] Note this refers to the funding mechanism, with some states such as Victoria already using individually attached and portable funding (individual support packages)

be delivered. Payment is made retrospectively under the NDIS, rather than prospectively under block funding arrangements.

The types of services that participants can access extend beyond direct disability services to other services that people without a disability also use, such as gardening services. Table 3 sets out the range of services that can be provided under the NDIS.

Table 3: Eligible providers of services under the NDIS[12]

Activity	Examples
Accommodation	• Full-time accommodation • Respite accommodation
Administration of medication	• Assistance administering insulin • Provision of depot injections for psychotropic, chemotherapy and other medications
Assistance in coordinating or managing life stages, transitions and supports	• Coordination of complex supports • Life/transition planning • Assistance to attend appointments, shopping, bill paying, social activities, maintaining social contact with others
Assistance to access and maintain employment	• Skills training • Assistance with arrangements • Orientation to assist a person with disability moving from school to work • Training that assists the client to be ready for employment and work in place of employment
Assistance to integrate into school or other educational programs	• Assistance to enable a participant to attend and participant in school or educational programs where their participation is limited by their disability and the needs are not able to be meet by the school or educational facility through reasonable adjustment
Assistance with daily life tasks in a group or shared living arrangement	• Assisting with / supervising tasks of daily life to develop skills to live as autonomously as possible • Vacation care required due to additional needs related to disability
Assistance with daily personal activities	• Active overnight assistance with self-care • Assisting with / supervising personal tasks of daily life to develop the client's capacity to live as autonomously as possible • Specialist care of the child in the home required due to additional requirements of the child's disability
Assistance with personal care	• Assisting the client to manage their budget, with personal communication and basic household and yard maintenance activities

[12] Refer to the NDIS website for the most up to date list of services.

Activity	Examples
Behaviour support	• Development of strategies to create better lives for people to limit the likelihood of behaviours of concern developing or increasing • Interventions in relation to psychosocial or relational issues required due to the person's disability
Clinical care / Community nursing care for high care needs	• Catheter changes, PEG feeds, suctioning
Early intervention supports for early childhood	• Early childhood interventions and family focussed information and training • Specialised individual therapy for children with autism • Family focussed information and training
Equipment use and maintenance	• Supply of any necessary equipment
Household Tasks	• Lawn-mowing, gardening, dishwashing, essential house cleaning activities, Provision of clean linen, delivery of prepared meals
Interpreting and translation	• Formal interpreting for Auslan or signed English • Captioning done remotely • Interpreting and translation
Management of funding for supports in a client's plan	• Setting up financial management arrangements • Ongoing maintenance of financial management arrangements
Participation in community, social and civic activities	• Social and recreational activities in a centre based program • Provision of support, equipment or training to enable a client to engage in community, social and recreational activities
Planning and development of daily living and life skills	• Training for the clients to increase their independence in personal care • Social skills development • Training for carers in matters related to caring for a person with disability
Specialised assessment of skills, abilities and needs	• Hearing test • Workplace assessments
Therapeutic supports	• Services by allied health professionals
Training for independence in travel and transport	• Training in the use of public transport • Training in driving using adapted equipment

In addition to the growth in service provision, the number of participants is likely to increase. Current estimates are that the number of participants receiving disability services will grow from 312,000 to as much as 460,000.[13] Given the increase in market size and decentralisation of purchasing power, it is likely that new providers will enter the market, including mainstream providers that offer transport or household assistance.

[13] National Disability Services (2014), *State of the Disability Sector*, p. 6.

These changes mean that existing providers will face increased competition and uncertainty about their funding and cashflow.

1.2 There are risks of harm and of poor quality services to be addressed

NDIS participants, their guardians or nominees will have to monitor and evaluate the quality of the services received. This involves a series of challenges:

- identifying the quality of services that can reasonably be expected
- articulating the areas in which services are inappropriate or unsatisfactory
- feeling sufficiently empowered to assert rights without fear of retribution or loss of service
- understanding where to complain about inappropriate or unsatisfactory services.

Negotiating effective service delivery is daunting for almost everyone, but it can be particularly challenging for people living with or caring for a person with a disability. In addition, the history of disability service delivery means that many participants will not have previous experience in managing the services that they require.

In economic terms, there are a number of different potential causes of market failure. Three such causes stand out. The first involves information asymmetry between suppliers of services (who typically have more information about their own services and the market) and the end-users (who are often acting with limited knowledge about the choice available and the differences between providers). The second involves externalities, where the providers' lack of investment in quality assurance increases the chances that participants receive services that are of low quality, unsafe, or unlawful. The third involves public goods / public bads: markets may fail to deliver the optimal level of protection for participants because they don't consider the impact of such protection (or a lack of protection) on the broader community (see Section 4.2).

As a result, without sufficient safeguards in place, NDIS participants and their guardians are vulnerable to sub-optimal outcomes.

In such circumstances, government intervention may be necessary to manage the risk that participants:

1. are harmed in some way, or
2. receive poor quality services that do not help them achieve their goals.[14]

These two risks are related: harm resulting from serious adverse events can be seen as an extension of unsatisfactory or inappropriate services. We consider each risk in more depth below.

Harm to participants

The risk of harm to participants is the more obvious of the two risks, and the risk that (understandably) causes the most public concern. Harm may occur through assault, sexual assault, theft or neglect,[15] known collectively as serious adverse events or SAEs.

[14] Department of Social Services (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.*

[15] For the purposes of this paper, neglect is the failure to attend to a participant's basic needs (food, warmth, cleanliness and health), usually over a sustained period, to an extent that significantly endangers the participant's physical or mental health.

State and territory governments have provided Nous with data on the serious adverse event rates experienced by people with disability in their jurisdiction (where this data was available). The available rates (data was not received from all jurisdictions) are set out in Table 4 below.

Table 4: Rates of serious adverse incidents reported to jurisdictions by providers (as % of clients)[16]

	Jurisdiction 1	Jurisdiction 2	Jurisdiction 3	Jurisdiction 4	Jurisdiction 5
Assault	2.0%	0.4%	0.3%	1.6%	0.2%
Sexual assault	N/A	0.3%	0.1%	0.2%	N/A
Theft	N/A	0.1%	0.1%	0.7%	N/A
Neglect	0.5%	0.1%	0.1%	0.1%	N/A

It is important to note that this data does not account for serious adverse events that are not reported. People living with disability, in particular, can face significant barriers in reporting crimes. These include dependence on the perpetrator of the crime due to a carer relationship, a lack of awareness of their right to report, physical and communication barriers, and previous negative experiences with police.[17] It is (by definition) impossible to know the proportion of adverse incidents that are not reported, but estimates of the under-reporting of crime against people with disability range from 40% to 80%.[18]

In almost every case, the costs of serious adverse incidents are borne by both participants and providers, as follows:

- Participants directly experience the harms that serious adverse events cause (whether or not they are immediately aware of those harms).
- Providers are also negatively affected – usually at a later date – as they must deal with investigation, litigation, loss of reputation, increased scrutiny and poor staff morale.

The cost benefit analysis that we detail later in this report considers both sets of costs.

Receiving poor quality services

The risk of receiving poor quality services is more diffuse but just as important. The NDIS is premised on the assumption that the delivery of individualised services will improve participants' lives in a way that block funding cannot. Poor quality services challenge this assumption.

It is difficult to identify the point at which unsatisfactory service, even objectively poor service, undermines the objectives of the NDIS. However, we can gain some understanding of the degree of risk of poor quality services by looking at the volume of complaints under current arrangements. Table 5 sets out the number of complaints about poor quality disability services that relevant State and Territory

[16] Source: data on reported incidents to relevant disability services department in the 2014 calendar year or the 2013-14 financial year provided to Nous by state and territory governments. The data suggest that these rates differ significantly between jurisdictions. However, the jurisdictions with lower rates of assault have different regulatory regimes, as do the jurisdictions with higher rates of assault. This is both important and somewhat counter-intuitive, as it implies that different regulatory regimes make little difference on the risk of assaults. We will return to this point in section 4.1.

[17] *Beyond Doubt: the experiences of people with disabilities reporting crime,* (2014). *Sexual assault and adults with a disability*, (2008).

[18] Wilson, C & Brewer, N (1992). *The incidence of criminal victimisation of individuals with an intellectual disability*, Australian Psychologist, vol. 27, no. 2, pp. 114-117; Mencap report, cited in Equality Human Rights report. Disability Rights Commission (DRC) and Capability Scotland (2004).

agencies have received over the course of the last three years. Again, these are the reported rates, and therefore represent only those circumstances where a person with relatively developed self-advocacy skills feels sufficiently aggrieved by poor service that they will go to the trouble of complain about the service to an external body.

Table 5: Rate of complaints about unsatisfactory service[19]

State/Territory	Office	2011-12	2012-13	2013-14
Australian Capital Territory	ACT Human Rights Commission	0.525%	0.385%	0.473%
New South Wales	NSW Ombudsman	0.400%	0.348%	0.433%
Northern Territory[20]	Health and Community Services Complaints Commission (NT)	0.136%	0.204%	0.272%
Queensland	Queensland Ombudsman	0.118%	0.091%	0.056%
South Australia	Health and Community Services Complaints Commissioner[21] (SA)	0.230%	0.255%	0.270%
Tasmania	Health Complaints Commissioner Tasmania	0.011%	0.011%	0.011%
Victoria	Disability Service Commissioner	0.828%	0.903%	0.926%
Western Australia	Disability Services Commission	0.177%	0.115%	0.107%

Many clients of disability services will be able to safeguard against risks of poor service delivery by being effective advocates, or having friends, families and carers advocate on their behalf. However, not all are in this position. This risk of harm may therefore require management through other means, including regulation. We discuss the regulatory options for dealing with complaints further in Section 1.4.1.

1.3 Regulatory responses can take various forms

State and Territory governments intervene to either minimise the risks of physical, psychological or financial harm to people with disabilities, or to promote optimal outcomes. Intervention usually involves both formal and informal government intervention:

- Formal government regulation occurs via legislation and legislative instruments. Such regulation is usually focussed on the provider and requires adherence to codes of conduct, rules and

[19] Source: relevant Annual Reports. Please note that these figures are for the main complaints bodies relating to disability services. However, Victoria and Queensland each have two complaints bodies; New South Wales has three; and South Australia has five. This issue is discussed further below, at page 21.

[20] In 2013/14, there were 44 approaches about disability services in the Northern Territory. Eight were managed as complaints, 38 (two of which led to a formal complaint) were managed informally as enquiries. In addition, 14 complaints were received about mental health services. The HCSCC will investigate complaints where there appears to be a significant issue of public interest or a significant question as to the practices and procedures of a provider. An explanation as to how complaints are differentiated from enquiries is contained in their Annual Report. See http://www.hcscc.nt.gov.au/wp-content/uploads/2010/04/FINAL-ANNUAL-REPORT-2013-14.pdf

[21] Note that HCSCC data only includes complaints about non-government disability service providers

reporting requirements; obtaining authorisation to deliver certain sorts of services; and mandating minimum qualifications for key personnel.

- Informal government regulation occurs below the level of legislation. Generally it manifests in two ways. First, governments can provide information that strengthens consumers' (in this case, NDIS participants') capacity to navigate the market effectively.[22] Second, governments can disseminate and promote guidelines and policy documents that raise the standards that providers strive to achieve.

State and Territory governments often couple formal intervention with informal intervention. For example, it is possible to promote a 'voluntary' code of conduct by making compliance a contractual requirement for any provider who wishes to access State funding.

For the purposes of this impact analysis, we are concerned with the relative impact of formal interventions. This means looking at the specific activities that governments undertake, or require others to undertake, in order to give effect to formal rules – activities such as conducting checks on potential employees, managing complaints, monitoring outcomes and conducting evaluations etc. – and breaking them down into individual costed inputs for our impact analysis model.

The way the model works to calculate the cost of having Working with Vulnerable People checks, for example, is that we count the number of checks typically performed and multiply this by the cost of labour in performing those checks. Each activity is deconstructed, costed and then used in similar calculations to derive overall costs associated with the regulatory option.

It is important at this point to note that in assessing the impact of different regulatory interventions, the goal is not to find the option that eliminates all potential risk of harm to the community. Rather the question for this impact analysis is whether regulation delivers the optimal value vis-à-vis the harms that the regulation aims to address.

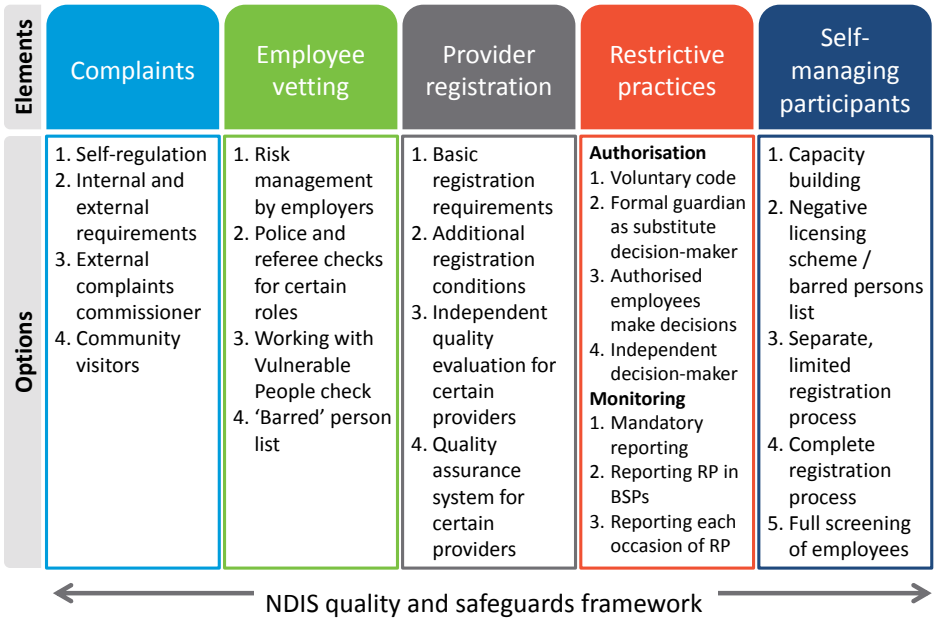
The risks that are the subject of regulatory options in each of the five elements are discussed in more detail in the following section.

1.4 Options in the Framework are intended to address risks across five elements

As noted above, the Framework is made up of five elements with regulatory options that seek to advance participants' rights and minimise the risk of harm or poor service quality (see Figure 3).

[22] As discussed above, participants may not be able to establish on their own if any particular provider delivers service of an appropriate quality. Aspects of this issue include knowing that the provider is reputable and that the staff providing the service are fit to do so.

Figure 3: Summary of options to be assessed



We describe below the risks and market failures that each element seeks to address – directly or indirectly – and the regulatory options being considered in this impact analysis. We also illustrate how the options within each element broadly correspond to current regulatory regimes in each of the jurisdictions.

1.4.1 Ensuring that participants' complaints are addressed properly

A complaint is the expression of dissatisfaction with a decision, service or product.[23] Complaint mechanisms seek to address participants' potential disempowerment by ensuring a robust and responsive complaints procedure. Complaints also produce systemic benefits both within organisations and across the sector, by helping providers understand what is required for the appropriate delivery of services. Complaints therefore give providers the opportunity to improve the quality of their services and potentially to reduce the risk of harm.

A robust complaints system requires the complainant to have the confidence and ability to make a complaint and for there to be a viable alternative or appeal process if the person is unsatisfied with the response to the complaint.[24] Government intervention to ensure robust complaints mechanisms addresses the risk that providers operate without an effective complaints process. Such intervention may be because:

- providers are unwilling or unable to properly investigate the complaints that participants raise
- participants, mainly highly vulnerable participants, are reluctant to complain about services they have received from a provider from whom they continue to receive care. [25]

[23] *Draft Consultation RIS* (3 November 2014) p. 39.

[24] Lumin Collaborative (2013), *National Disability Insurance Scheme Practical Design Fund: Potential Unintended Consequences of Self-Managed Support Packages & Appropriate Strategies and Safeguards to ensure People obtain the Full Benefit of Self-Managed Supports*, Commissioned by DFHCSIA Melbourne, Australia, p. 86.

[25] ABS 2011, *4439.0 – Social Participation of People with a Disability*, Available at: http://www.abs.gov.au/ausstats/abs@.nsf/mf/4439.0

Government intervention is intended to ensure that: providers have adequate complaints handling mechanisms internally; external dispute resolution mechanisms are effective and accessible; and serious and systemic concerns can be identified and addressed.

Recent government intercession

Each of the States and Territories employ different approaches to oversee the way that providers respond to complaints. This has resulted in a range of outcomes nationwide, including the establishment of new complaints handling bodies and changes in regulatory approaches to address the complaints raised by people with a disability (or their carers or representatives).

Around Australia, five new disability complaints handling bodies have been introduced since 2005:

- in the Australian Capital Territory, the Office of Regulatory Services – Fair Trading (created in 2006)
- in South Australia, the Health and Community Services Complaints Commissioner (created in 2005) and the Feedback and Incident Review Team of Disability SA (created in 2012)
- in Victoria, the Disabilities Services Commissioner (created in 2007) and the Mental Health Complaints Commissioner (created in 2012).

These bodies expand jurisdictions' capacity to engage with and address the complaints that participants, their carers and nominees raise about the level and standards of care and services they receive.

In addition to these changes, other States and Territories report significant regulatory changes designed to support people with a disability in having complaints about their care addressed. These regulatory changes include:

- in New South Wales, process changes at the NSW Ombudsman improve methods and approaches for dealing with people with disabilities[26]
- in the Northern Territory, the community visitors program, which collects complaints from people with disabilities, has been updated to include visits mandated by the *Alcohol Mandatory Treatment Act 2013*
- in Queensland, the introduction of the *Public Interest Disclosure Act 2010* and amendments to the *Disability Services Act 2006* has updated the regulatory regime to improve the complaints process for people with disabilities.

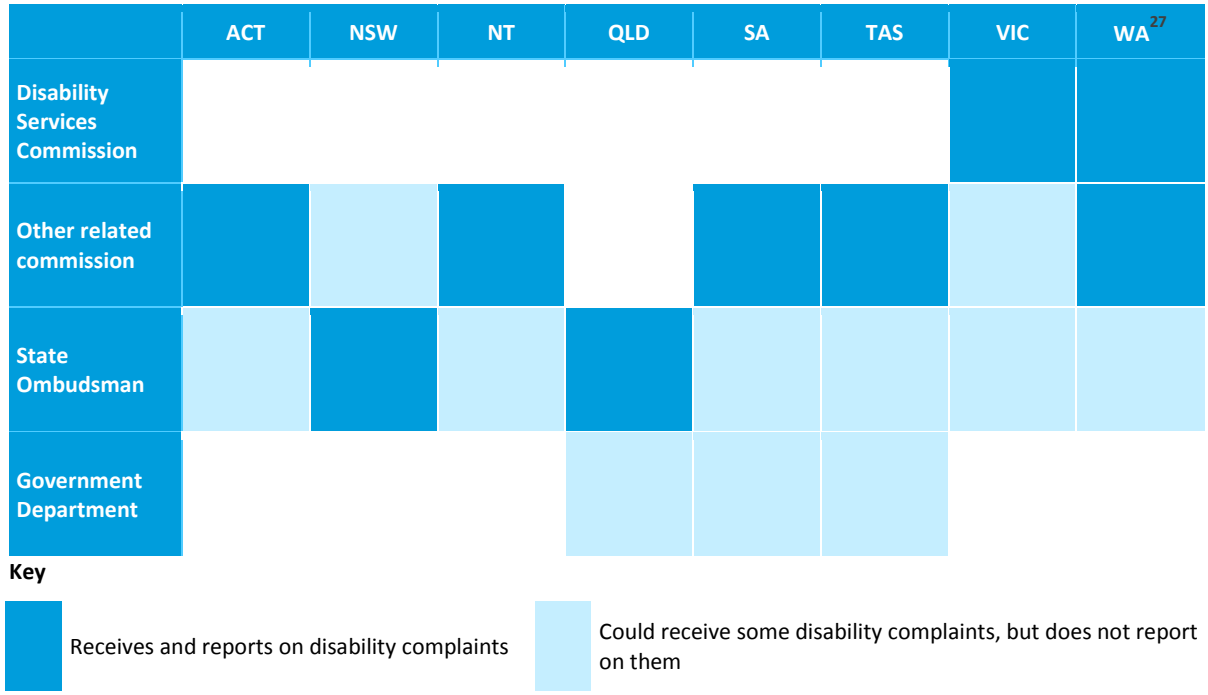
Participants, their carers and nominees therefore have the opportunity to complain about services using a series of different mechanisms in each State or Territory (see Table 6). Some jurisdictions have specific channels for particular types of complaints (for example the *Mental Health Complaints Commissioner* in Victoria) that help to promote tailored responses to specific kinds of complaints. This approach helps to capture complaints through a broader range of channels, although the approach also makes it difficult to capture a comprehensive picture of the complaints that participants are making about disability services. Appendix A sets out a full list of complaints processes.

Table 6: Avenues for complaint, by jurisdiction

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA[27]

[26] Ombudsman New South Wales 30 October 2014, *2013-2014 Annual Report.* Accessed from: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0007/19798/NSWOmbudsman-Annual-report-2013-2014.pdf

[27] The Health and Disability Services Complaints Office is the independent statutory authority responsible for complaints resolution relating to health or disability services provided in the State of Western Australia.



Options to be considered

Four distinct options for complaints mechanisms are being explored in the Framework, one of which could be implemented in two ways. Table 7 sets out the options.

Table 7: Complaints options

Option	Description
1: Self-Regulation	Providers would develop and operate their own complaints and feedback systems. They would be encouraged and assisted to establish best practice processes.
2: Internal and External Requirements	National Disability Insurance Agency (NDIA) registration conditions would prescribe a set of minimum standards for complaints handling by providers. There would also be an independent complaints review process which could take the form of an industry-initiated body or a contracted third party.
Independent statutory complaints function: **3a: Disability Complaints Office (part of NDIA)** **3b: Disability Complaints Commission (separate from NDIA)**	Providers would be required to demonstrate they have an effective internal complaints handling process. Government would establish an independent statutory body which would manage complaints, support participants, provide training and education and monitor the effectiveness of complaints handling. This could be established as an office within the NDIA (Option 3a) or separately to the NDIS as a Disability Complaints Commission (Option 3b).
4: Community visitors	This option could be implemented alongside options 1-3. Community visitors would be able to enter residential facilities, look at records and speak to participants. They would also have an advocacy role in supporting participants.

In this element, the options escalate by imposing gradually more prescriptive systems in relation to complaints, and then by requiring gradually more access by external bodies to encourage and arbitrate participant complaints.

Some of the options are mutually exclusive, however. For example, government cannot logically allow self-regulation (Option 1) at the same time that it prescribes a set of minimum standards for complaints (Option 2). On the other hand, government could, if it chose, create a statutory body to manage complaints (Option 3a or 3b), and authorise community visitors to enter a residential facility (Option 4). The relationship between options within the complaints and oversight element is set out in Table 8.

This issue is important because, as we noted earlier, the base case is not a single regulatory intervention, but reflects the prevailing regime in Australia of different and accumulating regulatory interventions. Acknowledging the potential for adding regulatory options together, and the reality that some options are mutually exclusive, allows a more nuanced and realistic comparison between a specific intervention and the base case. Nous explains how we compare specific interventions with the base case in Section 2.

Table 8: Relationship between options in the complaints and oversight element

Option	1: Self-Regulation	2: Internal and External Requirements	3a: Office (part of NDIA)	3a: Commission (separate from NDIA)	4: Community Visitors
1: Self-Regulation	-	X	X	X	X
2. Internal and External Requirements	X	-	✓	✓	✓
3a: Office (part of NDIA)	X	✓	-	X	✓
3b: Commission (separate from NDIA)	X	✓	X	-	✓
4. Community visitors	X	✓	✓	✓	-

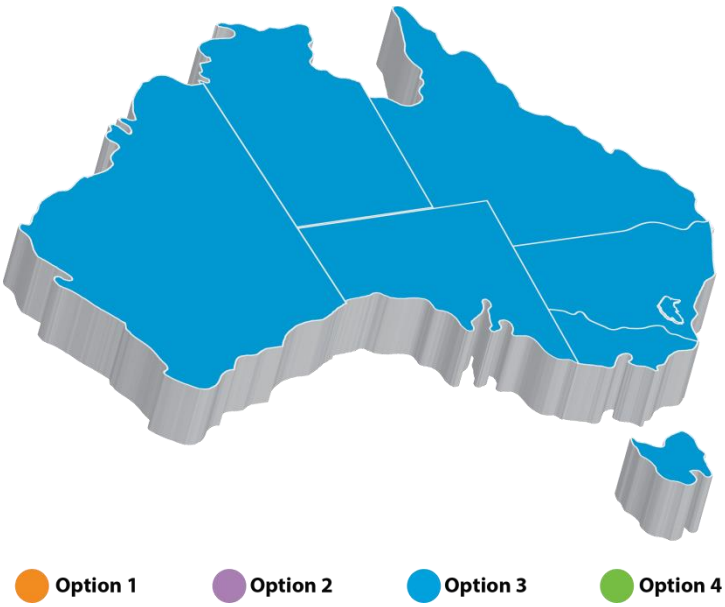
✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

Jurisdictional scan

The relationship between each jurisdiction's existing formal regulatory regime and the options in this element is illustrated in Figure 4 below. Essentially, this shows that all jurisdictions' current regulation aligns with Option 3 in the complaints element of the Framework.[28]

[28] Note that, as Figure 4 sets out, some of the current state regulatory systems have authorised a more general body, such as an Ombudsman or Health Complaints Commissioner, to perform this function.

Figure 4: Alignment of current relevant complaints regulation to the options



1.4.2 Ensuring disability service employees are appropriately vetted

In addition to encouraging providers to be appropriately responsive to participant complaints, governments often intervene to ensure that people employed by disability service providers are of an appropriate character. This usually involves checks of potential employees' previous behaviour. Such intervention is considered necessary to address the risk that employers (especially those facing acute staff shortages) might not check potential employees' previous behaviour; might employ people with inappropriate employment histories; or might not have formed a clear view about precisely when a particular person's history should prevent them from caring for vulnerable people. As a result, employers may employ applicants whose previous history of behaviour should disqualify them from working with people with disability.

The aim of vetting disability service employees is to:[29]

- reduce the likelihood that individuals who pose a risk to participants are employed
- remove those proven to pose a risk to participants
- signal the strong priority that Australian governments give to the rights of people with disability.

Recent government intercession

Many States and Territories have recently revised the systems they use to screen people who wish to work with disabled and other vulnerable persons to include additional checks. The following table sets out the actions that have been undertaken:

[29] Department of Social Services 2015, *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.*

Jurisdiction	Check	Impact
Australian Capital Territory	Working with Vulnerable People	The introduction of the *Working With Vulnerable People (Background Checking) Act 2011* in the ACT created a system of checks for people working with vulnerable people – including people with a disability– in the ACT.
New South Wales	Working with Children Check	NSW introduced a new scheme of checks for people who work with children under the *Child Protection (Working with Children Act) 2012*.
Northern Territory	Working with Children Check	The Northern Territory introduced a new scheme of checks for people working with children under the *Care and Protection of Children Act 2007*.
Queensland	Working With Children Check	Queensland introduced a Working with Children Check system in 2001 and is currently governed by the *Working with Children (Risk Management and Screening) Act 2000*. Recent amendments expanded the list of restrictions on who could obtain a 'blue card' following a working with children check. Additionally the Yellow Card system was introduced under the Disability Services Act 2006. It excludes some people from working with adults with a disability in the state funded disability sector on the basis of their criminal history. In recent times the Yellow Card system and the Working with Children Checks scheme in Queensland have been more closely aligned and an exemption mechanism exists between the two screening mechanisms. People working with children with disability are now required to hold a Working with Children Check positive notice (Blue Card) under the Working With Children (Risk Management and Screening) Act 2000.
South Australia	Working with Disabled People Check	The *Disability Services Act* 1993 (SA) requires employers to perform employment screenings in accordance with the *Disability Services (Assessment of Relevant History) Regulations* 2014 before a person is appointed or engaged to act in a prescribed position (whether as an employee, volunteer, agent, contractor and subcontractor). A prescribed position is one that includes regular contact or work in close proximity with people with a disability; supervision of people who have regular contact or work in close proximity with people with a disability; or access to records of people with a disability.
Tasmania	Working with Vulnerable People Check	The introduction of the *Registration to Work With Vulnerable People Act 2013* in Tasmania created a system of checks for people working with vulnerable people – including people with a disability– in Tasmania.
Victoria	Disability Worker Exclusion Screening	Introduced by an instruction issued by the Victorian Government in 2014 this screening process aims to prevent unsuitable people from being eligible to work with disabled people. It is designed to prevent harm occurring to people with a disability, particularly those living in care facilities.
Western Australia	Working with Children Check	Western Australia introduced a working with children check system in 2006 when the *Working with Children (Criminal Record Checking) Act 2004* was proclaimed.

Options to be considered

A number of options are being explored to ensure that the people delivering disability services are appropriate to do so. These are set out in Table 9 below.

Table 9: Employee vetting options

Option	Description
1: Employer risk management	Providers would be encouraged rather than required to have appropriate employee vetting processes in place. This would include systems that reduce the likelihood of employing individuals who pose a risk to participants.
2: Checks for high-risk roles	In addition to the use of risk management described in Option 1, employers providing higher risk services (e.g. personal support) would be required to assess potential employees' previous work history, undertake police checks and undertake referee checks.
3: Working with Vulnerable People clearances	This option would provide a more comprehensive check that captures a wider range of information than Option 2. Employees or potential employees would be required to obtain a working with vulnerable people clearance through a screening agency. The screening agency would be established to assess the risk a person poses.
4: 'Barred' persons list	This option would create a barred persons list. Providers would be required as a condition for registration to formally report when a staff member placed a participant at an unacceptable risk of harm. People could then be placed on the 'barred persons' list. Providers would also be required to consult the barred persons list prior to any appointment of an employee or volunteer.

The options are primarily formal. Only Option 3 and Option 4 capture behaviour that is not criminal in nature, and only Option 4 mandates a separate action by providers in the event that an employee behaves in an unacceptable manner while in their employ.

Again, some of the options are mutually exclusive, in the sense that government cannot allow employers to have their own systems (Option 1) at the same time that it prescribes checks for specific services (Option 2). On the other hand, government could, if it chose, require Working with Vulnerable People Checks (Option 3), and institute a 'barred persons' list (Option 4). The relationship between options within the employee vetting element is set out in Table 10.

Table 10: Relationship between options in the employee vetting element

Option	1: Employer risk management	2: Checks for high-risk roles	3: Working with Vulnerable People clearances	4: 'Barred' persons list
1: Employer risk management	-	X	X	X
2: Checks for high-risk roles	X	-	En	✓
3: Working with Vulnerable People clearances	X	En	-	✓[30]
4: 'Barred' persons list	X	✓	✓[30]	-

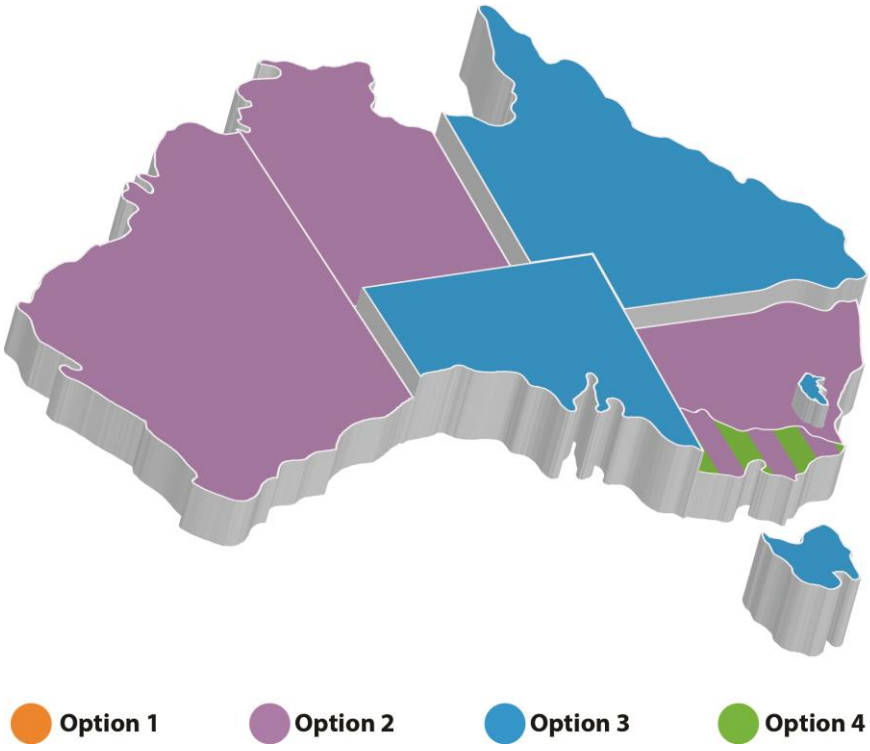
✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

[30] Note, however, that if Option 3 includes mandatory employer reporting (as some commentators have proposed) then Option 4 would be redundant.

Jurisdictional scan

The relationship between each jurisdiction's existing formal regulatory regime and the options is illustrated in Figure 5 below. Most jurisdictions have regulation that broadly aligns with Option 2 above. With Victoria, current regulation reflects a combination of Option 2 and Option 4. [31]

Figure 5: Alignment of current relevant employee vetting regulation to the options



1.4.3 Ensuring providers deliver quality services

Provider registration regulations seek to create a barrier to entry to ensure that providers in the market have demonstrated their bona fides and have sufficient capacity and capability to deliver the required services. If the barrier is low, then the role of government is to provide information to enable consumers to make informed choices. Alternatively, the barriers can be set at a higher level through the imposition of conditions on registration, in order to provide quality assurance and send a signal to the market about expectations of service quality.

The aim of this element is to strike an appropriate balance between:[32]

- providing participants with choice, and the confidence that the providers they choose are safe and competent
- eliminating unnecessary duplication of quality, compliance and reporting systems.

[31] Victoria has regulation similar to Option 4 (a 'barred' person list), but it only applies to people who work in direct support roles at disability residential services that are provided, funded or registered by the Department of Health and Human Services. Due to this limited scope, this model assumes Victoria's regulatory regime most closely approximates what is envisaged in Option 2.

[32] Department of Social Services (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.*

Recent government intercession

Four jurisdictions have recently updated their processes related to provider registration to provide for greater quality assurance of (and by) disability service providers funded by the specific jurisdiction. Table 11 sets out the actions that have been undertaken.

Table 11: Recent government intercession in provider registration

Jurisdiction	Updated process	Impact
New South Wales	Establishment of NSW Government Ageing, Disability and Home Care Supplier Directory	The ADHC supplier directory is a set of guidelines on the engagement and selection of providers to deliver services to people with disabilities. It is used to assess the suitability of these organisations. This assists in protecting the recipients of the services provided.
South Australia	Improved community visitors scheme regulations	The *Disability Services (Community Visitors Scheme) Regulations 2013* extended the oversight functions of the Community Visitors Scheme over the treatment of people with a disability in South Australia. This scheme provides an important check on the quality of the services being provided to disabled people in South Australia.
Tasmania	Updated Quality and Safety Standards Framework	These standards require organisations – including those providing services to people with a disability in Tasmania – to undertake quality and safety activities against recognised standards.
Victoria	Human Service Standards	The Standards, gazetted in 2012, aim to embed and promote rights for people accessing services and institute a common and systematic approach to review quality processes – they apply to services provided to people with a disability in Victoria.

Options to be considered

The options being assessed for provider registration are summarised in Table 12.

Table 12: Provider registration options

Option	Description
1: Basic registration requirements	This approach would require providers to comply with basic legal requirements and abide by an NDIS Code of Conduct. Additional conditions (e.g. quality controls and quality assurance) and industry certification would be voluntary and quality evaluation would not be required.
2: Additional registration conditions	This option builds on Option 1 by requiring additional conditions for registration. These additional conditions would enable the CEO of the NDIA to check that a registering organisation or individual has the systems in place to limit risks to participants. Quality evaluation would be voluntary.
3: Mandated independent quality evaluation for certain providers	This option builds on Option 2 by requiring certain providers to participate in an independent quality evaluation to assess how they contribute to delivering outcomes to participants. An independent party would conduct the evaluation and assess indicators of effectiveness through observation and in-depth interviews. Only providers delivering supports likely to involve potential for high risk to participants would be required to participate in a quality evaluation.

Option	Description
4: Mandated quality assurance system for certain providers	This option builds on Option 3 by requiring providers of certain kinds of supports to undertake a more rigorous quality assurance and improvement process. The provider would be required to meet the requirements around the experience of participants (from Option 3), as well as recognised industry governance, management standards and achieve certification with a recognised certification/accreditation body.

The options increase the degree to which government involves itself (either directly or through a third party) in investigating providers' quality, and the degree of assurance that such investigations offer to participants. By mandating formal quality assurance processes, higher options also aim to eliminate poor quality services that occur as a result of systems-level failures. Provider registration also provides an opportunity for government to cancel the registration of any providers who are found to meet minimum quality requirements, thus reducing the likelihood that these providers' services might lead to serious adverse events.

As Table 13 indicates, the options in this element are wholly cumulative, with no mutual exclusivities.

Table 13: Relationship between options in the provider registration element

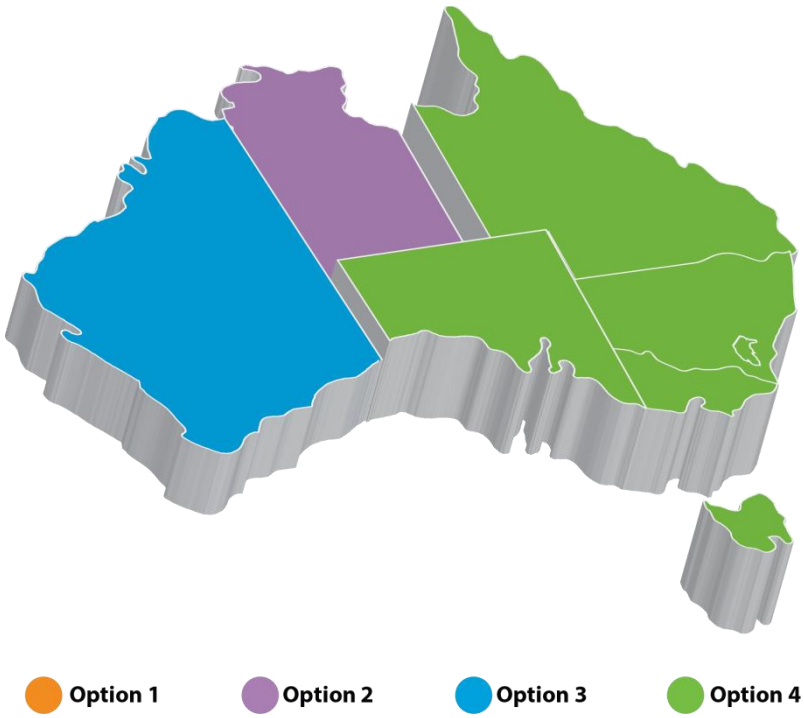
Option	1: Basic registration requirements	2: Additional registration conditions	3: Mandated independent quality evaluation for certain providers	4: Mandated quality assurance system for certain providers
1: Basic registration requirements	-	En	En	En
2: Additional registration conditions	En	-	En	En
3: Mandated independent quality evaluation for certain providers	En	En	-	En
4: Mandated quality assurance system for certain providers	En	En	En	-

✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

Jurisdictional scan

The relationship between each jurisdiction's existing formal regulatory regime and the options is illustrated in Figure 6 below. It shows that the eastern states' provider registration regulations broadly accord with Option 4, while WA and the Northern Territory have regimes similar to Option 3 and Option 2 respectively.

Figure 6: Alignment of current relevant provider registration regulation to the options



1.4.4 Reducing and eliminating the use of restrictive practices

A restrictive practice is any intervention which restricts the rights or freedom of movement of a person with a disability who displays challenging behaviours, where the primary purpose of that intervention is to protect that person or others from harm.[33] Recognising that current practice does not support the use of restrictive practices to manage challenging behaviour, State and Territory governments have committed to the *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector*.[34]

Restrictive practices cause very high and numerous costs and are also a breach of human rights, and should therefore be applied only in exceptional circumstances where the risks of the participant's behaviour cannot be managed using other appropriate techniques. In addition to the risk of physical harm to participants[35] and staff,[36] people whose behaviour is managed using restrictive practices often suffer psychological harm.[37] Restrictive practices therefore frequently negatively impact the therapeutic

[33] COAG 21 March (2014), *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.* Sourced: https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector

[34] Commonwealth Department of Social Services (2014).

[35] Webber, L, Richardson, B, Lambrick, F & Fester, T (2012). *The impact of the quality of behaviour support plans on the use of restrain and seclusion in disability services*, p. 8.

[36] Research also shows high level of WorkCover claims when staff are implementing restrictive practices. Sanders K (2009), *The effects of an action plan, staff training, management support and monitoring on restraint use and costs of work-related injuries*, Journal of Applied Research in Intellectual Disabilities, vol. 22, no. 2, pp. 216-220.

[37] Ramcharan, P; Nankervis, K; Strong, M; & Robertson, A (2009), *Experiences of Restrictive Practices: A View from People with Disabilities and Family Carers*, A final research report to the Officer of the Senior Practitioner, Department of Health and Human Services, Victoria, Australia.

relationship between consumer and staff, as well as expose providers to the risk of litigation for unlawful assault.[38]

There is uneven expertise in the disability sector in relation to the appropriate use of restrictive interventions. Without government intervention, providers might not proactively set in place the structures necessary to ensure that restrictive practices truly are used only as a last resort and hopefully eliminated. Providers might not have these structures in place because they lack the skills to:

- accurately determine the specific circumstances in which restrictive practices are necessary
- understand alternative approaches that might be used instead of restrictive practices
- proactively discuss the circumstances when restrictive practices are necessary with the participant and the participant's friends and family.

As a result, providers may use restrictive practices more often and more intensively than is necessary. This restricts participants' freedom and dignity, and risks harm.

The aim of reducing and eliminating restrictive practices is to ensure that:[39]

- restrictive practices are always used as a last resort
- if restrictive practices are used to manage a participant's behaviour, the least restrictive form of restrictive practice is always used
- participants are involved in developing their behaviour support plans
- people who know the participant well are involved in developing their behaviour support plans
- participants understand and, to the greatest extent possible, agrees with the plan
- decision makers are well-informed about, accountable for, and authorised to decide, whether or not restrictive practices are to be included in a participant's behaviour support plan
- effective systems for monitoring the use of restrictive practices are in place, at both the individual and system levels
- appropriate and necessary linkages with other systems (including the mental health system) are made for individuals who exhibit challenging behaviour, the management of which requires restrictive practices.

Recent government intercession

Three states updated the way they manage the use of restrictive practices in respect of people with a disability to ensure a higher quality of care. Table 14 sets out the actions that have been undertaken:

[38] Hon WJ Carter Q.C. July (2006), *Challenging Behaviour and Disability: A Targeted Response*, Report to Warren Pitt M.P., Queensland.
[39] Department of Social Services (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.*

Table 14: Recent government intercession in restrictive practices

Jurisdiction	Change	Impact
Queensland	Amendments to the *Disability Services Act 2006 and Guardianship and Administration Act 2000*	The *Carter Report*, a major review into disability in Queensland, recommended the development of a new legislative framework for providing disability services to adults. This included amendments to various acts designed to maximise the opportunity for positive outcomes for adults with an intellectual or cognitive disability who exhibit challenging behaviour. These amendments have been made with a view to improving outcomes for patients.
Tasmania	Establishment of a Senior Practitioner	The *Disability Services Act 2011* established the role of 'Senior Practitioner' in Tasmania. The Senior Practitioner advises the Secretary of the Department of Health and Human Services on the provision of specialist disability services – including setting guidelines and standards for restrictive practices and investigating the use of restrictive practices. This provides valuable oversight of the use of restrictive practices in Tasmania.
Western Australia	Introduction of the Voluntary Code for the Elimination of Restrictive Practices	The Voluntary Code for the Elimination of Restrictive Practices was introduced in Western Australia to provide the disability sector with the basis to develop operational policy and guidelines for eliminating the use of restrictive practices. This system is designed to reduce the use of restrictive practices in Western Australia and improve outcomes for patients.

Options to be considered

Table 15 summarises the options being explored for managing the risks associated with inappropriate use of restrictive practices. As indicated, there are two aspects to regulation in this element – an aspect dealing with authorisation and an aspect dealing with monitoring. The authorisation aspect aims to prevent inappropriate use of restrictive practices by ensuring that the final decision to use restrictive practices is made by a person with skill and expertise. The monitoring aspect aims to ensure that providers maintain appropriate records about restrictive practices and report those circumstances of restrictive practices that the government considers are worth attention.

Table 15: Restrictive practices options

Element	Option	Description
Restrictive practices (authorisation)	**1: Voluntary code of practice**	There would be a voluntary code of practice and guidelines for use of restrictive practices. There would not be a formal consent or authorisation requirement. Providers would be encouraged to work closely with families or legal guardians to ensure (to the greatest extent possible) that all parties agree with the behaviour support plan.
	2: Substitute decision makers must be a formally appointed guardian	Consent to include restrictive practices in behaviour support plan must be obtained from a person formally appointed as the participant's legal guardian.

Element	Option	Description
	3: Providers authorised to make decisions under specific conditions	A specific person or panel of qualified people employed by the provider would be permitted to authorise a behaviour support plan which permits use of restrictive practices. Legislation would specify the skills and experience a person must meet before s/he could approve a restrictive practice.
	4: Authorisation only by independent decision maker	Providers would be required to obtain authorisation to use restrictive practices from an independent decision maker. This independent decision maker could be an extension of the role of guardianship tribunals or could be an independent office holder.
Restrictive practices (monitoring)	1: Mandatory reporting only of emergency use of restrictive practices	Providers would be required to report whenever restrictive practices were undertaken other than in accordance with an approved behaviour support plan. Providers would also be required to report serious incidents that occurred as a result of the use of restrictive practices (e.g. where use could have or did result in injury or death).
	2: Notification of inclusion of restrictive practice in behaviour support plans	In addition to the reporting of emergency use under Option 1, providers would be required to report whenever restrictive practices were included in a behaviour support plan.
	3 Reporting each occasion of non-routine restrictive practice	In addition to the reporting of Option 2, this option would require providers to regularly report each time restrictive practices were used.

The options in the restrictive practices authorisation element are entirely mutually exclusive (Table 16), while the options in the restrictive practices monitoring element build on each other (see Table 17).

Table 16: Relationship between options in the restrictive practices authorisation element

Option	1: Voluntary code of practice	2: Substitute decision makers must be a formally appointed guardian	3: Providers authorised to make decisions under specific conditions	4: Authorisation only by independent decision maker
1: Voluntary code of practice	-	X	X	X
2: Substitute decision makers must be a formally appointed guardian	X	-	X	X
3: Providers authorised to make decisions under specific conditions	X	X	-	X
4: Authorisation only by independent decision maker	X	X	X	-

Option	1: Voluntary code of practice	2: Substitute decision makers must be a formally appointed guardian	3: Providers authorised to make decisions under specific conditions	4: Authorisation only by independent decision maker

✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

Table 17: Relationship between options in the restrictive practices monitoring element

Option	1: Mandatory reporting only of emergency use of restrictive practices	2: Notification of inclusion of restrictive practice in behaviour support plans	3: Reporting each occasion of non-routine restrictive practice
1: Mandatory reporting only of emergency use of restrictive practices	-	En	En
2: Notification of inclusion of restrictive practice in behaviour support plans	En	-	En
3 Reporting each occasion of non-routine restrictive practice	En	En	-

✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

Jurisdiction Scan

The relationship between each jurisdiction's existing formal regulatory regime and the options is illustrated in Figure 7 and Figure 8 below. It is clear that there are currently quite different approaches to authorising restrictive practices across the jurisdictions. With respect to monitoring the use of restrictive practices, current regulation aligns most closely to options 1, 2 and 3 only.

Figure 7: Alignment of current relevant regulation to the authorisation of restrictive practices options[40]

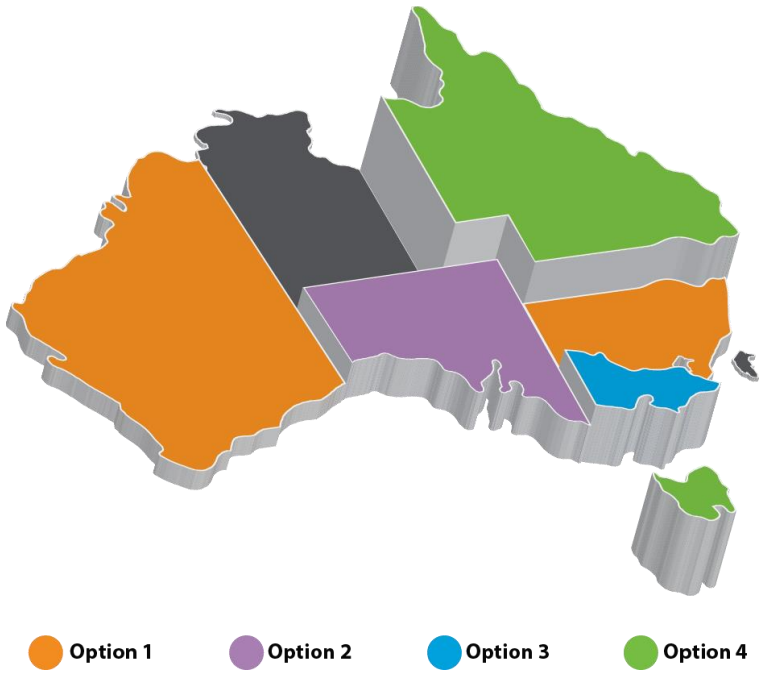
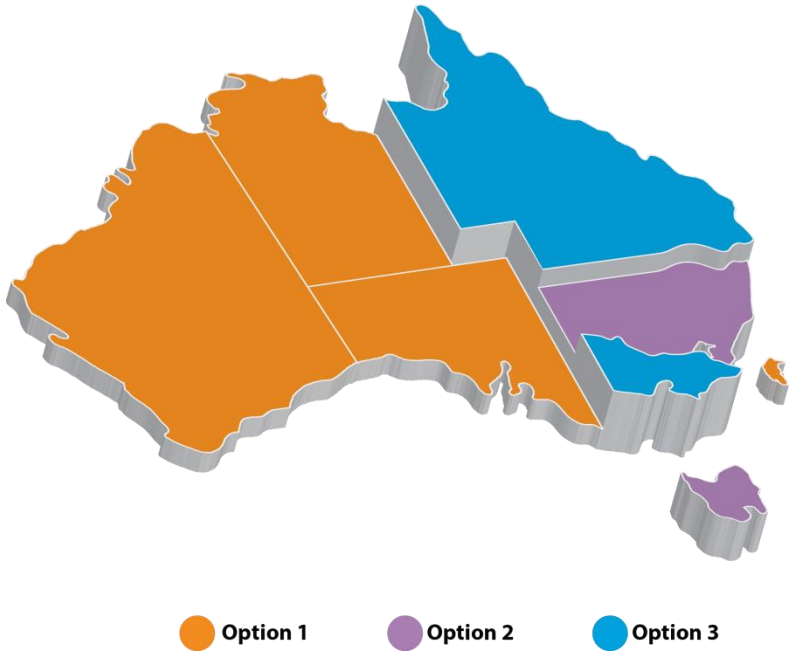


Figure 8: Alignment of current relevant regulation to the monitoring of restrictive practices options



[40] The Northern Territory government has not legislated generally in relation to restrictive practices for the provision of disability services; which is reflected as the grey area (i.e. no option is appropriate). A significant proportion of restrictive practice authorisations in the Northern Territory occur through community treatment orders which fall under the justice system, and are therefore outside the scope of the NDIS.

1.4.5 Protecting self-managed participants

All NDIS participants will be able to choose which providers they want and how their supports are delivered, and will have the choice on the degree of direct control that they wish to have over the administration and management of their supports[41] Many participants will enjoy the feelings of autonomy and dignity (including the dignity of risk) that self-management will bring, in addition to the general benefits of being part of the NDIS.

Participants whose affairs are managed by the NDIA will enjoy the protection of the NDIA's processes and the other aspects of the Framework. However, NDIS legislation provides that self-managing participants can choose to receive support from any provider they wish. This freedom exposes self-managing participants to the risks that the Framework is intended to manage: that a provider might not provide a service of appropriate quality, or that the provider's actions might result in a serious incident.

Self-managing participants will receive services from existing service providers and new providers (including those who deliver services that are not specific to disability). In this context, a system of provider registration that balances the risks of low quality services and the compliance costs for providers will be necessary.

The aim of protecting self-managed participants is to ensure that:[42]

- participants determine their own best interest
- participants are equal partners in decisions that affect their lives to the full extent of their capacity, including decisions about the planning and delivery of supports.

Options to be considered

A number of options and sub-options for self-managed participants are being assessed, as detailed in Table 18. The options potentially replicate some of the interventions considered in other elements.

Options 2a, 2b and 3c replicate some of the options to employee vetting, and aim to manage the risk to self-managing participants by eliminating those who have previously been found to have engaged in unacceptable behaviour.

Options 3a and 3c replicate some of the options relating to provider registration, by requiring providers who work only with self-managing participants to partially or fully comply with the quality assurance practices required of other NDIS providers.

Table 18: Options for self-managing participants

Option	Description
1: Building participants' capacity to manage their own risks	Participants would be free to select any provider they chose, including providers not registered with the NDIA. However, support would be given to help people manage potential risks.
2a: Negative licensing scheme	This option would establish a mechanism to prevent organisations or individuals who may pose a risk to NDIS participants from providing supports. This mechanism would collect information about unethical or unsafe individuals and organisations, and then assess and decide whether the organisation should be prevented from providing supports.

[41] RIS Consultation Paper, p 67

[42] Department of Social Services (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework.*

Option	Description
2b: Barred persons scheme	Employers would be required to report an employee whose behaviour has endangered participants. The reports would be investigated and people found unsuitable to work in the sector would be placed on a barred persons list. Self-managing NDIS participants would be able to check the list but it would not be mandatory for them to do so.
3a: Separate registration process with limited conditions	The NDIA would set up a separate registration process for providers delivering services to self-managing participants and who have not been registered through other provider registration systems. The NDIA would make it a condition of funding for certain types of supports that the provider, if not fully registered, has been approved for this more limited registration.
3b: Complete registration for all providers	All NDIS participants would be required to procure supports from providers registered under the same registration conditions imposed by the NDIA for high risk providers in the provider registration options.
3c: Full screening of all employees	Unlike Option 3b, Option 3c would allow participants to choose providers who have not met NDIA screening requirements. However, these providers would be required to obtain individual clearances (such as a Working with Vulnerable People check).

Table 19: Relationship between options in the self-managing participants element

Option	1: Building participants' capacity	2a: Negative licensing scheme	2b: Barred persons scheme	3a: Separate but limited registration process	3b: Complete registration for all providers	3c: Full screening of all employees
1: Building participants' capacity	-	X	X	X	X	X
2a: Negative licensing scheme	X	-	En	✓	✓	✓
2b: Barred persons scheme	X	En	-	X	✓	✓
3a: Separate but limited registration process	X	✓	✓	-	En	En
3b: Complete registration for all providers	X	✓	✓	En	-	X
3c: Full screening of all employees	X	✓	✓	En	X	-

✓ = **options** compatible; X = **options** mutually exclusive; – = same option; En = **options** with greater government intervention encompasses less government intervention

Jurisdictional scan

No jurisdictional scan is appropriate for this element, as it constitutes a new area of regulation.

2 Impact analysis method

The impact analysis seeks to assess the impact that each option will have when compared to other options and to the base case, which is the prevailing regulatory regime. The impact is assessed across a number of different spheres, including the total regulatory burden, the effect on competition, and the distribution of costs and benefits. This analysis involves quantifiable and non-quantifiable considerations, using the most accurate data possible.

This section sets out how Nous has conducted the impact analysis by explaining:

- the five main components that together form the impact analysis
- how we have compared individual options to the base cases
- the steps in developing the cost benefit model
- the methods used for the sensitivity analysis, the regulatory burden analysis and the competition analysis.

2.1 The impact analysis has five main components

The impact analysis has five separate components: the risk analysis; cost-benefit analysis, the distribution analysis, the regulatory burden analysis and the competition analysis.[43] The details of each component are set out in Table 20.

Table 20: Impact analysis components

Impact analysis	Description
Risk analysis[44]	The risk analysis places the proposed regulation in perspective, by investigating: the likelihood of relevant undesirable events occurring under the regulatory options; the consequences that would follow if such an event were to occur; and how much it will cost the community to reduce or eliminate the risk.
Cost-benefit analysis	Cost-benefit analysis is a systematic evaluation of how each option will affect the community and the economy. It emphasises, to the extent possible, valuing the gains and losses from a regulatory proposal in monetary terms and calculating a Net Present Value (NPV) for each option, but also qualitatively measures other outcomes.[45]
Distribution analysis	Distribution analyses set out how the costs and benefits are distributed amongst relevant stakeholders – in this case: participants, providers and government – and over time. This draws attention to issues of equity by quantifying the impacts of proposed actions on different groups.

[43] The components reflect COAG guidance including the COAG (October 2007) *Guide to Best Practice Regulation* and the Office of Best Practice Regulation's (OBPR), (2014) The Australian Government *Guide to Regulation.*

[44] In accordance with OBPR Guidance, Nous has incorporated this analysis into the preliminary analysis and problem statement: see OBPR (1 July 2014), *Guidance Note: Risk Analysis in Regulation Impact Statements.*

[45] COAG (2007), *Best Practice Regulation: A Guide for Ministerial Councils ad National Standard Setting Bodies*, p. 21.

Impact analysis	Description
Regulatory burden analysis	Regulatory burden analysis quantifies the costs of current and proposed regulation on businesses, community organisations and individuals. This quantification allows calculations of the degree to which new regulation adds to the regulatory burden, or is offset by reductions in existing regulation. Regulatory burden analysis is conducted using the Regulatory Burden Measurement framework.[46]
Competition analysis	Competition analysis assesses the degree to which the options would be likely to restrict competition, and therefore to restrict efforts to achieve efficiency and innovation. If significant reductions of competition are found to be likely, the competition analysis investigates the alternatives that are available and the social benefits that flow from each alternative.

The analysis in this report brings together all four elements of the impact analysis to help identify the relative merits of different options and assess them in an objective manner.

2.2 The analysis compares a series of different regulatory states

Impact analyses compare each relevant option's cost and benefits to other options and to the base case. It is important to make some general points about these regulatory environments.

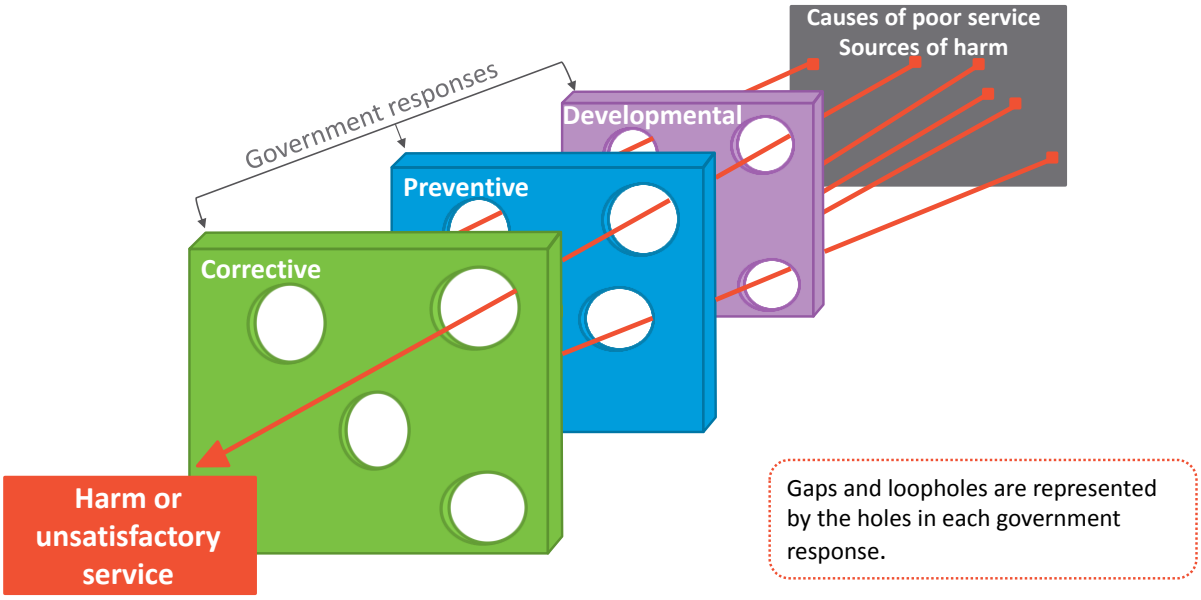
The 'base case' is a regime of regulatory interventions

In accordance with usual practice in impact analyses, the base case for this report is the 'do nothing' approach. In this case, a do nothing approach would involve each jurisdiction continuing its existing regime of multiple formal interventions across each element.[47]

Multiple regulatory options will usually have a cumulative effect, depending on how they respond to the specific market failure or other perceived risk. The options that we analyse in the employee vetting element, for example, require providers to undertake increasingly rigorous means of assessing potential applicants' prior behaviour. By deploying multiple options, governments reduce the loopholes and gaps that any single option allows to exist. This dynamic is illustrated in Figure 9. Gaps and loopholes in any government response are represented by the holes in each block: increasing government regulation reduces the number of holes (although it also increases the cost to government and to providers).

[46] The Regulatory Burden Measurement Framework is outlined in Commonwealth Department of Prime Minister and Cabinet (2015), *Guidance Note: Regulatory Burden Measurement Framework*.
[47] See Section 1.4.

Figure 9: How government regulation may act cumulatively[48]



As the base case is a regime of regulatory options, the costs and benefits of the base case will necessarily dwarf any individual option. This makes comparison difficult. Nous will therefore consider:

- the costs and benefits of an individual option, and
- how individual options might operate together, to respond to minimise the risk of harm, and advance the rights of, people with a disability.

Where the options are mutually exclusive – or where greater government intervention encompasses less government intervention – the costs and benefits of each option can be identified separately but not added together.

Where the options are complementary, the impact of each option can similarly be quantified separately and as a package so that the cumulative impact (including cost) of each additional option can be assessed.

Even in an unregulated state, there will be forces that promote good practice

Modelling the costs and benefits of each individual option requires us to understand how that option would work in isolation; that is, in an otherwise-unregulated environment. To model this effect realistically, it is important to acknowledge that regulation is not the only reason why stakeholders act. Many other forces (including personal ethics, a desire for competitive advantage and the wish to avoid liability) will push providers to voluntarily undertake actions similar to those that the regulatory options mandate. For this reason, when evaluating the costs of regulation, Nous distinguishes between (and measures) the activities that are undertaken as a response to the proposed regulatory options from the activities that would be undertaken in any case.[49]

[48] Adapted from Reason, J (1997), *Managing the Risks of Organisational Accidents*.

[49] See Commonwealth of Australia, Department of Prime Minister and Cabinet (2014), *Regulatory Burden Measurement Framework,* p. 3. (Regulatory Burden Measurement framework calculations are to measure regulatory burden over and above what a normally efficient business would pay in the absence of regulation.)

Data need only be internally valid

Strictly speaking, the impact analysis is not interested in the absolute benefits of each regulatory option; only each option's costs and benefits compared to the other options and compared to the regulatory base case.

The cost-benefit analysis is done by comparing the impact of an option with the current regulatory baseline. Given that the baseline varies between jurisdictions, some options could produce a negative NPV (i.e. where an option is for there to be less safeguards in place than currently exist) and the impacts might differ significantly across jurisdictions.

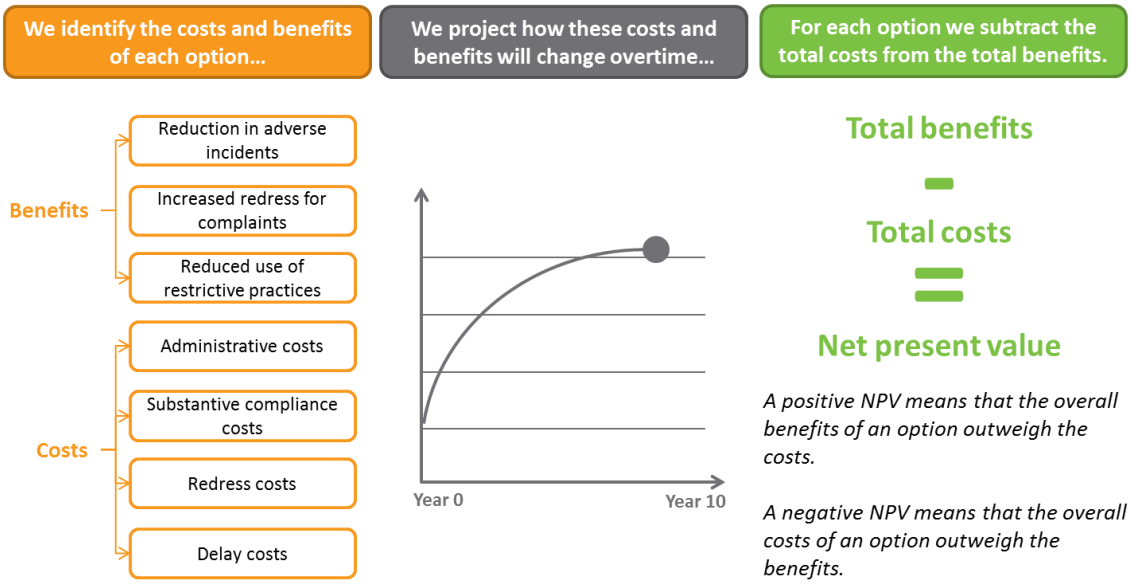
It is important to note, therefore, that data used for the impact analysis need only be robust for the purposes of the comparison – that is, for determining the relative impact of options. This means that the data can have systemic biases, so long as the same systemic biases apply to the analysis of the current state and the analysis of the contemplated changes.

For example, as noted earlier, the rates of serious incidents in disability services are likely to be under-reported. This will reduce the accuracy of any ultimate impact analysis by systematically under-estimating the benefits that the options deliver. In order to establish accurate differences between options, Nous has included measures to overcome the over-reporting. However, as the impact analysis process is essentially comparative, it is not strictly necessary to know the true level of abuse to be able to compare the costs and benefits of each option.

2.3 There are several steps in the cost-benefit analysis process

A summary of how we have calculated the NPV of the regulatory options that are the subject of this impact analysis appears in Figure 10 below.

Figure 10: Process for calculating Net Present Value



Quantified cost benefit analyses take place through a mathematical model. The key steps in building the model are:

1. **Identify how regulation affects each stakeholder group.** The COAG RIS process requires identifying whether each option will increase or decrease the regulatory burden on relevant

stakeholder groups. Therefore, in addition to understanding how the various options work in each jurisdiction (i.e. as part of the base case analysis), it is also necessary to consider the implications and imposts of the current regulatory regimes for providers, participants and governments. Nous has analysed the activities related to compliance with regulation under the base case and the options across all five elements.

2. **Develop formulae to describe the relationship between components**. These formulae describe the relationship between the components and how it will be possible to determine each quantitative measurement. They also describe how the sources of cost/benefit respond differently over time.
3. **Identify data sources and data collection techniques for quantitative and qualitative assessments.** The sources of data are:
    - administrative data from government
    - survey of disability service providers
    - publicly available data and research
    - expert opinion.

    The data sources are described in more detail at Section 3.2 (page 54).
4. **Conduct the cost-benefit analysis including sensitivity testing and distributional analysis**. The cost-benefit analysis projects the quantitative impact of the regulatory options over a 20 year period and uses a discount rate of 7%. The model calculates a Net Present Value (NPV). A positive NPV shows that the benefits of the option outweigh the costs and the option is 'economically viable'.

Please note that the CBA considers only those costs and benefits that are direct and material. By 'direct', we mean costs and benefits that result immediately from the regulatory option. By 'material' we mean costs and benefits that represent a significant addition to annual operational costs.

The quantified cost benefit analysis delivers a single figure, which is the Net Present Value (NPV). The NPV is literally the quantified value of the cost, subtracted from the quantified value of the benefits. A positive NPV indicates that benefits are greater than costs. A negative NPV indicates that costs outweigh benefits. The size of the NPV does not, however, indicate the actual magnitude of the costs or benefits. A low, positive NPV might indicate small costs and benefits, or it might indicate that very significant benefits overcome very significant costs.

2.4 Sensitivity analyses indicate how robust the cost-benefit analyses are

Sensitivity analyses help unpack the degree to which analytical conclusions will change, depending on changes in key variables used in the cost benefit analysis. Sensitivity analyses are particularly helpful where (as occurs here) a range of reasonable assumptions could be used in an impact assessment, and individual judgements will vary as to what constitutes best estimates.[50]

Sensitivity analysis involves altering the key variables and recalculating the estimated NPV for the new scenarios to gauge the range of impacts reasonably associated with an option (see Figure 11). This

[50] See Australian Government (2007), *Best Practice Regulation Handbook*, pp. 80-81. Important assumptions for the cost benefit analysis are set out in Section 4 on page 48.

assists in identifying which assumptions are critical to the final NPV, as well as the robustness of estimated net benefits. If the option retains a positive NPV across the different dimensions of sensitivity, the results are robust and variations in that dimension will not prevent costs from outweighing benefits.

Figure 11: Process for undertaking sensitivity analysis

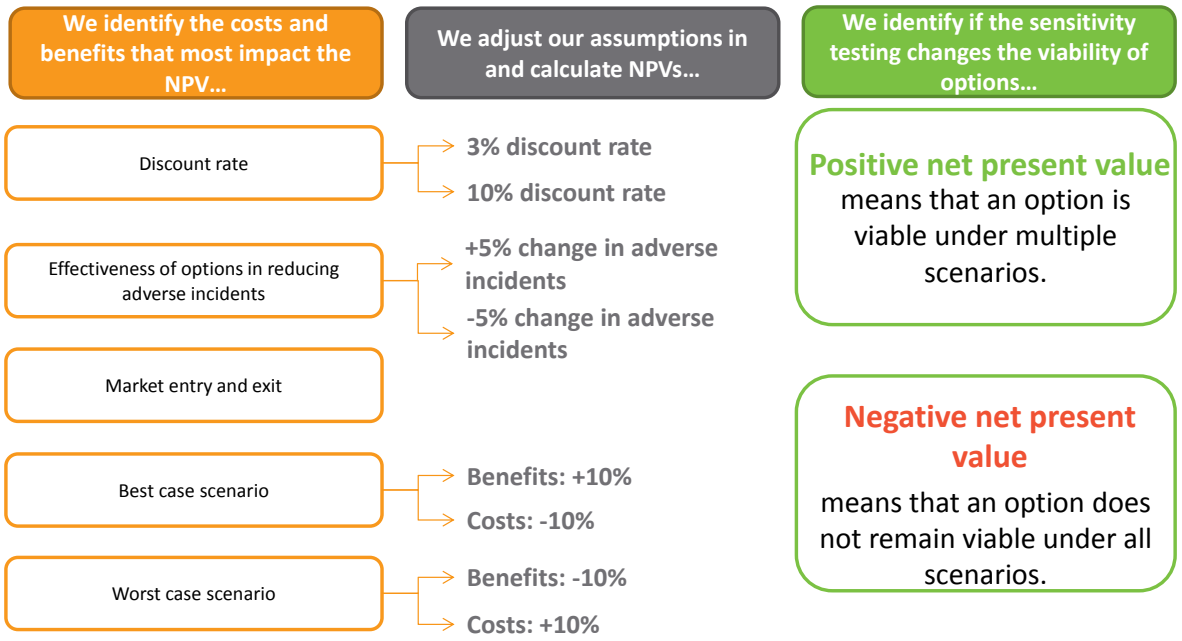
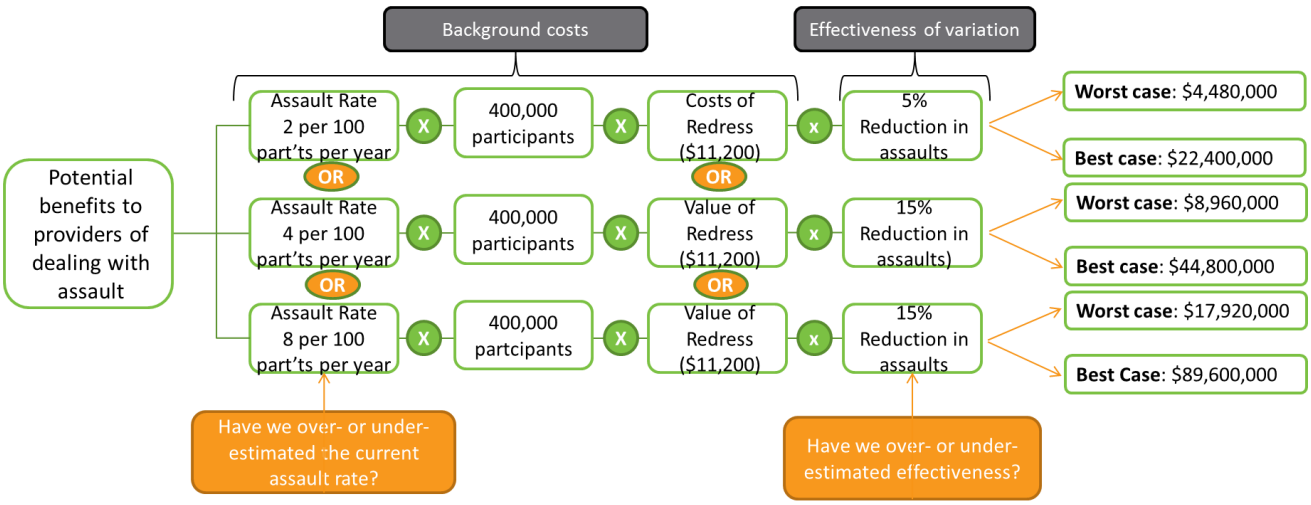


Figure 12 illustrates how the sensitivity analysis works, using a slice of the overall model through which the cost-benefit analysis is undertaken.

Figure 12: Illustration of sensitivity analysis logic



The issues that are likely to have the biggest impact on the NPV are:

1. The **overall discount rate** applied to generate the NPV of future costs and benefit. The base rate for calculations is 7%; the sensitivity analysis varied the rate to 3% and 10%. This variation accords with OBPR guidelines.[51]
2. Variations in **market entry and exit**. This is the rate at which existing providers leave the market for disability services and new providers enter the market.
3. The **effectiveness** of each option's capacity to reduce SAE rates (the sensitivity analysis increased effectiveness by 5% and reduced effectiveness by 5%).[52]
4. Variations to account for the **best case** and **worst case scenarios**. For the best case scenario, this involves raising the total benefits by 10% and decreasing the costs by 10%: for the worst case scenario, this involves decreasing the benefits by 10% and increasing the costs by 10%**.**

2.5 The Regulatory Burden Analysis focuses on providers' regulatory burden

The cost-benefit analysis cannot capture the overall impact that each regulatory option has on relevant stakeholders. For this reason, we conduct two additional analyses: one that consider the regulatory burden and one that considers the effect on competition.

The Regulatory Burden Analysis focuses only on the regulatory burden that regulation imposes. Unlike the CBA, which is a comparison of costs and benefits, the Regulatory Burden Analysis focuses only on the regulatory burden that an option imposes. This burden includes:

- *administrative costs:* record-keeping costs, notifying government, conducting tests, making applications and completing the paperwork necessary to comply with regulation
- *substantive compliance costs:* training to meet regulatory requirements, purchasing and maintaining plant necessary for compliance, obtaining advice about regulatory requirements
- *delay costs:* costs of making an application and costs of waiting for approval.[53]

The Commonwealth Office of Best Practice Regulation (OBPR), in the *Regulatory Burden Measurement framework* requires RISs to report on the regulatory burden using the regulatory burden and cost offset estimate for each option. In accordance with OBPR requirements, the data is presented as the impact over the first year.[54] The Regulatory Burden Analysis also identifies how the regulatory burden might be offset, including via reductions in other regulation and efficiency gains. In the context of this impact analysis, such offsets occur through replacing jurisdiction-specific regulatory regimes with a national Framework.

As the Regulatory Burden Analysis focuses on regulatory burden only, it produces large numbers. In order to provide context around these numbers, Nous will also provide specific information about the specific aspect of the regulatory burden in each option.

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[51] Office of Best Practice Regulation, Department of Prime Minister and Cabinet (2014), *Guidance Note: Cost Benefit Analysis*.

[52] This issue is discussed in more detail in section 4.1.

[53] Office of Best Practice Regulation, Department of Prime Minister and Cabinet (2014), *Guidance Note: Regulatory burden measurement framework* pp 2-3.

[54] Ordinarily, the OBPR requires costs to be presented as the average annual impact over ten years, with no discount rate (see ibid p 5). However, as costs are not expected to vary over time, the impact of the change in the first year can be treated as the average annual impact (see ibid p 6).

2.6 Competition analysis considers each option's impact on competition between providers

The NDIS constitutes a move away from government provision of services. As such, governments need a minimum number of providers to meet the demand for services. Without such providers and competitive pressures amongst those providers, it may be difficult for the NDIS to deliver better outcomes for NDIS participants. It is therefore necessary to assess how each of the regulatory options affects competition in the disability services market.

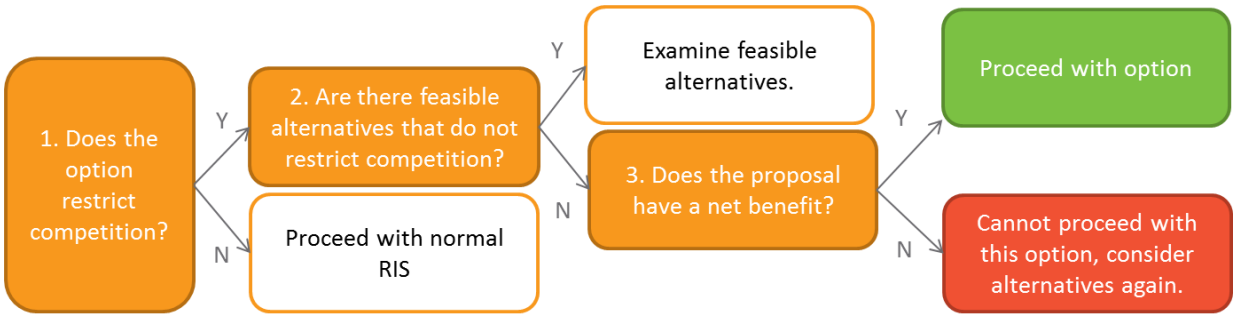
Formal competition analysis seeks to understand the extent to which each regulatory option restricts competition. Regulations might restrict competition by limiting or reducing:

- the number or types of businesses
- businesses' ability to compete
- the incentive for businesses to compete
- the choices and information available to consumers.[55]

If any option restricts competition, the competition analysis examines the negative effects of these restrictions, in order to weigh them against the option's other costs and benefits. If proposed regulation restricts competition, it may only be adopted if it generates a net benefit to the community as a whole. This means that the benefits of the regulation (in fixing an identified problem or achieving a desired social outcome) should outweigh the costs.[56]

The logic of the investigation is illustrated in Figure 13, below.

Figure 13: Competition analysis – relationship between key lines of enquiry



For each element, the competition analysis explores a series of questions (see Table 21):

Table 21: Competition analysis – areas of investigation

Key LOE	Topic	Question
1. Does the option impact on business market	Market entry	Does the option impose regulatory barriers to market entry?
		Does the option increase costs to market entry?

[55] Office of Best Practice Regulation (2014), *The Australian Government Guide to Regulation*
[56] Ibid p. 36. The net benefits that are analysed are extraneous to the competition analysis.

Key LOE	Topic	Question
entry and operations	Provider operations	Does the option limit the ability of some types of providers to provide some services?
2. Does the option restrict the competition process	Customer access to services	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?
		Does the option reduce providers' ability to adapt / innovate their service offer?
	Market information	Does the option limit providers' freedom to advertise or market their offer?
		Does the option limit providers' ability to set independent prices?
		Does the option limit the information available to consumers?
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?
3. Does the option generate a net social benefit	Overall net benefit	Does the benefit that the regulation is likely to achieve outweigh the costs that the regulation is likely to impose?

3 Data collection and quantification

The impact analysis depends for its validity on the data that is used to build relevant models. The impact analysis must therefore use robust data to quantify the impacts to ensure that the cost-benefit analysis is accurate and reflects reality. Where data is unavailable, realistic and reasonable assumptions must fill the gaps.

This section discusses:

- the definition of costs and benefits relevant to the impact assessment
- data sources used
- how Nous has assessed those costs and benefits that could not be quantified.

3.1 The analysis encompasses all relevant costs and benefits

The CBA considers the direct costs and direct benefits that flow from the regulatory interventions that the impact analysis considers. For this reason it does not consider (either as a cost or a benefit) any indirect effects that might flow from increasing the quality of disability services delivered under the NDIS, such as enhanced quality of life or increased workforce participation, that participants or their carers might experience.

Nous has sought to include as many costs and benefits as possible in the CBA.

Benefits

The 'benefits' of regulation are those consequences that address the problem that the regulation targets. In the case of the Framework, these are the need to secure participants' rights and minimise the

risk of harm, while maximising the choice and control that participants have over their lives.[57] The benefits to be measured are therefore:

- reductions in serious adverse events[58]
- increased redress for complaints (defined as the satisfactory resolution of participant complaints by the provider, and the participant's option to take complaints to external investigators)
- reduced use of restrictive practices (which applies only to the restrictive practices element).

The benefits of alternative regulatory proposals are therefore savings, or 'harms avoided', in the sense that the concrete effects of a quality and safeguarding framework involve reductions in adverse incidents and better investigations of adverse incidents that do occur.

In addition to these benefits, there are likely to be significant benefits associated with increased confidence in providers and in the way that they deliver services. These benefits will be experienced by participants; their friends and family; providers' employees (in terms of greater pride in their workplace); and the community generally (as increased security about how they will manage a sudden catastrophic loss of functioning that would not otherwise be compensable).[59]

Costs

'Costs' in the context of this analysis are the burden of costs associated with a particular regulatory option – an administrative overhead, staff or participant time, or actual expenses. These costs are derived from a consideration of the responses to regulation (usually activities) that produce a particular output.

Table 22, below, sets out a list of the costs that providers incur.

Table 22: Costs incurred by providers

Type of cost	
Administrative costs	
Making, keeping and providing records	Making applications
Reporting to government	Demonstrating compliance with regulation
Mandated quality assurance (not otherwise undertaken)	
Substantive compliance costs	
Providing training to meet regulatory requirements	Providing information to (non-government) third parties
Purchasing and maintaining plant and equipment	Professional services needed to meet requirements
Delay costs	
Delays in application process	Delays in regulators communicating approval

[57] See page 11.

[58] The Consultation RIS defines serious adverse events as "events which threaten the safety of people or property" and including physical injury, sexual or physical assault, and property loss.

[59] See Productivity Commission (2011), *Disability Care and Support:* Report no. 54. The value of these benefits is discussed in section 4 (see page 48).

Type of cost
Other costs
Direct financial costs (including charges and levies)

The costs that government incurs include the operational costs of administering and enforcing the regulation, and the costs of preparing educational materials to improve the quality of provider services.

For participants, costs include things like being unable to obtain adequate care.

3.2 We sought information from a variety of sources

Nous sought and received the following information:

- administrative data from State and Territory governments
- information about provider activities via a survey of disability service providers
- publicly available data and research
- expert opinion.

Each source of data is considered below.

Survey of disability service providers

Nous surveyed disability service providers across Australia to understand the regulatory burden of existing regulation. Nous developed a short survey to capture providers' general experiences and views in relation to the relevant elements, and a more detailed survey that asked additional questions relating to the time and expense that providers incur when complying with current regulatory regimes.[60] Copies of the survey questions are provided in Appendix B.

Nous received 202 responses to the short survey and 87 responses to the more detailed survey. Nous received responses from all jurisdictions, with a broad distribution of workforce size in each jurisdiction. Overall, 77% of respondents reported deductable gift recipient (or not-for-profit) status, which reflects the rates in the disability sector.[61] Approximately 38% of respondents reported already supplying services under the NDIS, especially from South Australian and the ACT (59% and 89%, respectively).

Almost one-quarter of respondents were from disability service providers with a workforce of 1-19 FTE including volunteers. The majority of respondents (59%) had 20-200 FTE. There was also a significant number of disability service providers with more than 200 FTEs included in the sample (17% of the total). Note that the average number of FTE for an organisation across the disability sector is 27.[62]

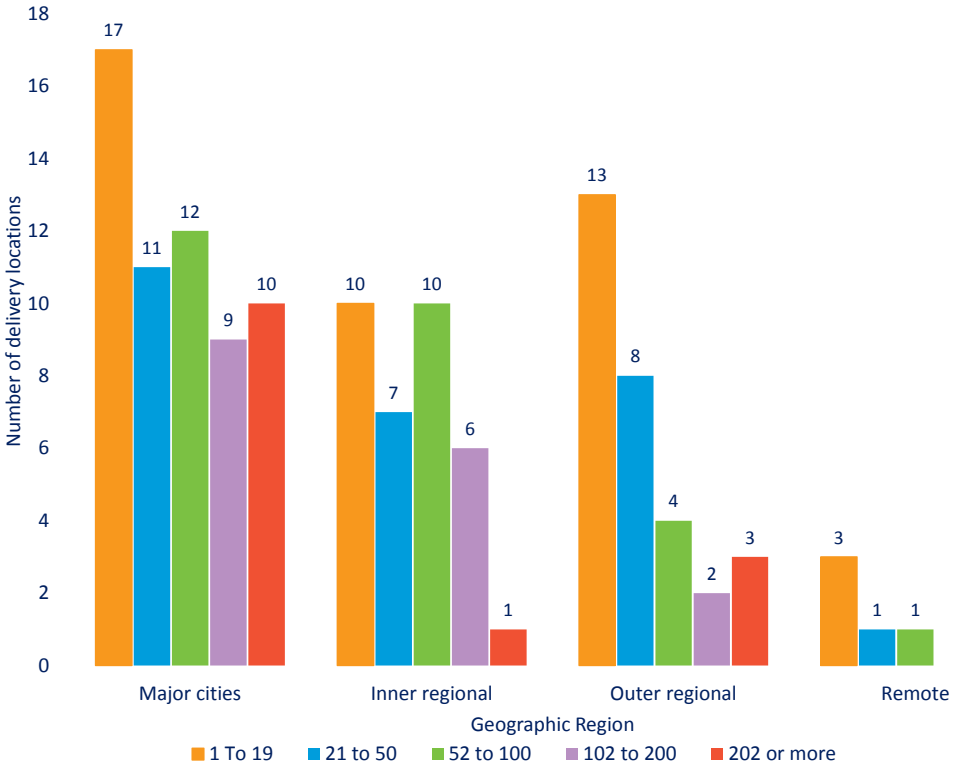
Providers who responded to the survey deliver services mainly in major cities and inner regional areas (see Figure 14).

[60] This accounts for loss of productivity through disruption to work or through having to take time off work. Nous sought and received assistance from National Disability Services and the Attendant Care Industry Association (ACIA) Australia to finalise and publicise the survey. Nous wishes to formally record its gratitude for both organisations' generous help.

[61] National Disability Services (2014), *State of the Disability Sector*, p. 5.

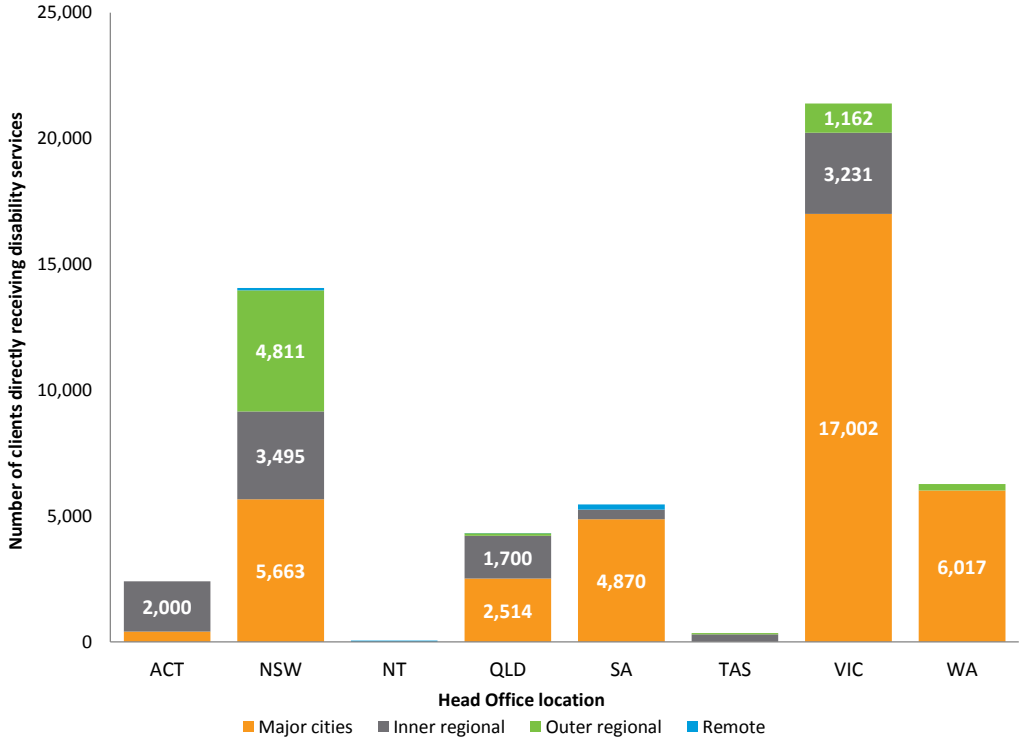
[62] Ibid, p. 3.

Figure 14: Count of delivery locations by Region and staffing level (FTE)



Many respondents reported that they deliver services in metropolitan, regional and remote areas simultaneously (see Figure 15).

Figure 15: Clients directly receiving disability services by head office location and delivery region



Administrative data from government

Nous collected administrative data from State and Territory governments on each jurisdiction's current regulatory regime. Specifically, we sought information related to the activities involved in complying with regulation (which become inputs and outputs in our model), as well as the costs of managing regulation and compliance. A copy of the information request form is attached at Appendix C. We were also able to access a good deal of relevant information that is on the public record.

Because governments collect such data for their own purposes, and these purposes vary across the jurisdictions, there was inconsistency in the detail and comprehensiveness of the data we received. In some cases, jurisdictions were unable to provide information requested. Some information was provided on a confidential basis and is described generically.

The Nous project team included two expert advisers on the disability services sector and two expert advisers on regulation and regulatory impact assessments.

We also consulted a number of subject matter experts, including Disability Services Commissioners, Senior Practitioners, consumer advocates, and experts in sexual abuse in care. Their assistance was essential to properly:

- understand the potential impacts of each option
- articulate any challenges that an option or an element might bring
- test assumptions in our model.

Consultation took place through roundtable discussions, online engagement (using the MindHive platform) and through one-on-one interviews. Nous has included experts' opinion as part of the general commentary on each option, and has used experts' opinion to supply estimates where there were gaps in the data supplied from other sources. A list of the experts consulted is provided in Appendix D.

Publicly available data and research

Nous conducted extensive research of publicly available data and research, including academic literature and publications from the Australian Bureau of Statistics, Australian Institute of Criminology and National Disability Services. Nous used this data to check and compare with other data sources, to inform our other analysis, and to ensure a strong evidence base to the assumptions in our model.

3.3 The impact analysis includes factors assessed qualitatively

The Framework is likely to generate a series of direct consequences that cannot be given a quantitative value, and which therefore need to be considered apart from the quantitative analysis. These outcomes fall into two main categories, both of which are integral to the reasons why the NDIS was created.

The first involves benefits (and costs) associated with respect for (and diminution of) participants' and other people's rights and dignity. It is challenging – and invariably controversial – to place a dollar figure on the benefit that these outcomes bring, as to do so might encourage an inference that such rights and dignity could be 'traded away' if the benefits were sufficiently large. Even if one were to accept that valuation is appropriate in the context of cost-benefit analysis, there would be real challenges in deciding whose opinion to seek about the value to be place on such rights. For example, one of the benefits that a robust complaints mechanism achieves, apart from increasing the overall quality of disability services (see Section 1.4.1) is by providing a sense of inclusion and respect for participants as people. This outcome, known as 'process utility' will have obvious value for participants, but is likely also to have value for carers and for the wider community. This value involves not just the direct value that

people will hold knowing that they will receive fair treatment should they become NDIS participants, but also the diffuse value of contributing to a society that provides such fair treatment.

The second, related, category involves feelings of participation in the community. This feeling of participation is an important driver for consumers and their representatives to lodge complaints: people are motivated to complain 'so that nobody else has to experience what I [or my loved one] went through'. In many cases, in fact, complainants consider this motivation to be more important than any expectation of compensation.

These outcomes are essential to a comprehensive evaluation of relevant issues. Where Nous identifies a factor that cannot be assessed quantitatively, Nous will comment on that factor as part of its analysis of each option.

4 Key assumptions that underpin our model

The impact analysis – especially the CBA (which encompasses the NPV calculation and qualitative analysis) and the regulatory burden analysis components – required Nous to isolate and value all relevant inputs. As mentioned earlier, inputs essentially reflect the activities involved in regulating or complying with regulation broken down to a specific variable that can go into a formula to produce a cost or benefit amount. For example, 'time taken to complete a form' may be one input.

For some of these inputs, there is little robust data. Nous therefore implemented a series of strategies to acknowledge these gaps while still enabling development of a rigorous model to analyse impact. This section discusses the key inputs for which there is insufficient or problematic data and the assumptions we have had to make to address these shortcomings.

Given we have defined benefits largely in terms of avoidance of harm, it follows that much of the discussion in this section centres on issues to do with measuring incidence of serious adverse events (SAEs). These issues include:

- difficulties measuring the relationship between regulation and incident rates
- adjusting for under-reporting
- creating a comparator of an 'unregulated state'

We also cover in this section the assumptions used to determine the:

- value of confidence in disability services
- number of participants and providers over time
- rate at which options have an effect
- labour costs for government activities
- discount rate for NPV calculations.

4.1 Serious Adverse Events

Difficulties measuring the relationship between regulation and incident rates

Data from all States and Territories on SAEs does not indicate any clear relationship between the type of formal regulation in place and the rate of adverse incidents. This is counter-intuitive, as one might expect a jurisdiction with a more intensive regulatory regime would experience fewer incidents than one with a less intensive regime. There are a number of reasons why the correlation may not be evident:

- *Datasets may not be complete* – jurisdictions have acknowledged the risk of under-reporting abuse and neglect of people with disability in residential care and other settings; this is why, for example, NSW introduced mandatory reporting.
- *Datasets use different definitions* –governments and providers in each jurisdiction have worked independently when developing the infrastructure necessary to deliver and monitor disability services. This infrastructure develops in response to each party's perceived needs, and these needs will differ between jurisdictions and between stakeholders. In such circumstances, designers and users adopt different fields for capturing information, and different definitions of relevant concepts. Indeed, the need for consistent definitions and information capture has driven recent regulatory change within some jurisdictions.

- *Governments supplement formal regulatory arrangements with informal regulatory arrangements* – as noted earlier, when governments procure services they often impose a higher standard on providers than they require as a matter of strict law. This means that, while one jurisdiction's regulatory regime might look 'weaker' in terms of formal rules in law, in practice, there may be much less difference because some rules are contained in contracts or stipulated in 'guidelines'.
- *Regulation can take time to have an effect* – regulation takes time to change people's behaviour and for those changes in behaviour to be recorded. As such, it may be too early see the impact of the more recent changes introduced in a jurisdiction.

In light of these realities, we have made two assumptions that are necessary in order to produce the model. The first is that the overall regulatory regimes, which combine formal and informal regulation across all the different elements, have similar effects on providers and participants. The second is that it the variation across the jurisdictional data provides sufficient information to compare this base case against the comparator, which is the unregulated state (discussed below).

Adjusting for under-reporting

This rate of SAEs, however, needs to be adjusted to account for the underreporting of crimes against people with disability. To account for this, we have increased the reported rates of adverse incidents by a factor of 2.5. This multiplier derives from published research into the difference between reported rates and 'true' rates.[63]

It is also important to note that the different elements of the quality and safeguarding framework will target different aspects of SAEs as follows:

- Employee vetting will affect assault, sexual assault and theft but not neglect.[64]
- Restrictive practices will affect assault (of participants or bystanders), but not theft or neglect.
- Provider registration will decrease neglect, assault and sexual assault, but probably not theft.[65]

In order to maximise clarity and efficiency in data collection and analysis, the impact analysis for each element will therefore only evaluate the benefits that each element has the potential to affect. This is set out in Table 23 below.

[63] Research suggests that the rates of underreporting by people with disability range from 40% to 80%. See Wilson, C & Brewer, N (1992), *The incidence of criminal victimisation of individuals with an intellectual disability*, Australian Psychologist, vol. 27, no. 2, pp. 114-117; Mencap report, cited in Equality Human Rights report.; Disability Rights Commission (DRC) and Capability Scotland (2004).

[64] Nous makes this statement on the grounds that neglect is usually the outcome of institutional processes over a sustained period, while the behaviours captured by employee vetting relate to the individual. It is true that neglect can arise from the actions of a single employee who supervises a person requiring 24 hour care, but Nous considers that the employee vetting process is unlikely to significantly reduce the proportion of employees who might allow that sort of neglect to occur. The forces that bring about institutional neglect are not captured by checks aimed at managing tendencies towards a particular type of criminal behaviour.

[65] In this document, 'quality assurance' means any systematic process of checking to see whether a product or service being developed is meeting specified requirements. Quality assurance processes deal with institutional behaviour generally, and are (at best) indirectly related to behaviour towards employees. Theft occurs when people perceive a financial need, have the opportunity to engage in theft, and can rationalise theft. Quality assurance processes are unlikely to address these issues sufficiently or consistently enough for quality assurance to impact meaningfully on rates of theft across a jurisdiction.

Table 23: Relationship between elements and reductions in SAE rates

	Incidence Rate			Is there a potential effect to evaluate?				
	Reported rate	Multiplier for under-reporting	'True' Rate	Complaints & Oversight	Employee vetting	Provider Registration	Restrictive practices	Self-managing participants
Assault[66]	1.0%	2.5	2.50%	Yes	Yes	Yes	Yes	Yes
Sexual assault[67]	0.2%	2.5	0.5%	Yes	Yes	Yes	Yes	Yes
Neglect[68]	0.5%	2.5	1.25%	Yes	No	No	No	No
Theft[69]	0.4%	2.5	1.00%	Yes	Yes	Yes	Yes	Yes
Unsatisfactory service	2.0%	1.5	3.00%	Yes	No	Yes	Yes	Yes

Comparing the base case and the options to the 'unregulated state'

Impact analysis techniques require comparison between each relevant option and the base case. The base case is the current regulatory regime in place in each State and Territory, and is a combination of several different regulatory interventions. Nous has disaggregated the existing and potential regulatory regimes, so that each option can be studied separately. To do this, Nous has hypothesised an 'unregulated' state – that is, a state that exists without direct government regulation. This unregulated state provides a stable comparator for both the base case and the individual options.

In the unregulated state, we have assumed that government has not intervened to regulate the delivery of disability services. Realistically, there will still be a number of other forces at work that drive providers to try to protect participants' interests. These forces include simple ethics, fear of litigation, provider reputation, and universal consumer protection legislation.

No jurisdiction in Australia or overseas has a disability services sector that is not regulated by disability-specific regulation[70] and historical data is not useful as disability providers in Australia have been regulated for many decades. This makes it difficult to quantify costs and benefits in an 'unregulated state' for the purposes of comparison.

[66] Data from state and territory governments indicates that rates of reported assault range from 0.2% to 2.0%. We have assumed that rates of assault are 1% on average across all jurisdictions.

[67] Data from state and territory governments indicates that rates of reported sexual assault range from 0.1% to 0.3%. We have assumed that rates of sexual assault are 0.2% on average across jurisdictions.

[68] Data from state and territory government indicates that rates of reported neglect range from 0.1% to 0.5%. We have assumed that rates of neglect are 0.5% on average across jurisdictions.

[69] Data from state and territory government indicates that rates of reported theft range from 0.1% to 0.7%. We have assumed that rates of theft are 0.4% on average across jurisdictions.

[70] Western Australia has 'light-touch' formal regulation, but mandates compliance with the National Disability Standards when it contracts to provide block funding to Western Australian disability service providers. This informal regulation effectively imposes the same level of prescription as formal regulation imposes in other jurisdictions.

To address this data gap, we have made a series of assumptions regarding the 'lightest touch' or non-regulatory options for each element of the quality and safety framework. Specifically, we have:

- assumed the current regulation (i.e. the base case) produces a zero NPV as this is the minimum value required to justify the existence of the current state (i.e. governments wouldn't have introduced the regulation if it didn't produce a net benefit)
- iteratively adjusted the rates of incidents in a hypothetical unregulated state to have the model produce this zero NPV for the base case
- set these rates as the unregulated rates of incidents for our analyses in the report.

In effect, we have assumed that in an unregulated environment, industry bodies, providers and consumers would still implement safeguards. However, the take-up of these safeguards would be inconsistent due to their voluntary nature.

Appendix E has more information on the assumptions associated with calculating the impact that each option will have on each type of SAE compared to the unregulated state. It also goes into more detail about how the value of a reduction in SAEs is realised by different stakeholders.

4.2 Value to the community of confidence in disability services

In addition to the avoidance of harm, benefits calculations need to account for improved service quality and consumer empowerment. This requires placing a value on the increased confidence in disability services that should occur when governments intercede to improve disability services.

As noted earlier, this increase in confidence will be experienced by participants, their friends and family, providers' employees and the community generally.

For the purposes of our CBA calculations, Nous has assumed that increased confidence is worth 50% of the value of the more concrete benefits that flow from government regulation, such as the reduction in SAEs.[71]

4.3 Number of participants and providers over time

The NPV of each option will be strongly affected by the total number of participants and providers. Nous has assumed that the NDIS is fully utilised at the commencement of the modelling period ('year zero'), so the population of participants will be 460,000.[72] Nous makes this assumption on the basis that State and Territory services that directly serve people with disability will cease to operate once NDIS starts.[73]

Determining the number of providers is trickier. A 2014 survey of the disability sector revealed the following challenges to viability and capacity:

[71] Note the final NPV calculations do not include this 50% loading for increased confidence. Instead this figure is intended to give readers a guide to how important the otherwise unquantifiable benefits of a quality and safeguard framework are. This figure – like the predicted reduction to SAE's under different regulatory options – was developed in consultation with the Department and academics.

[72] Nous notes that other recent estimates suggest a higher number of potential participants. In particular, scheduled increases in the pension age from 2017 to 2023 may lead to 'back-end growth', where people receiving NDIS-funded supports choosing to stay on the NDIS, rather than move into the aged care system. See: Baker, A (2012), *The New Leviathan: A National Disability Insurance Scheme*. While obviously relevant to the overall costs, this issue is too speculative to be incorporated into the model, especially as the CBA is essentially comparative and increases in population will simply magnify the differences that exist between the Options.

[73] NDIS (2015), *Operational Guideline – Registered Providers of Supports.*

- one-third of responding disability providers met recommended cashflow standards[74]
- forty percent reported insufficient financial resources in the previous six months
- two-thirds reported an increase in demand over the previous six months.

It seems that the need for economies of scale is driving consolidation in the sector. Approximately one-quarter of the disability organisations responding to the same survey reported having either merged, entered into consortia, or formed other formal partnerships in the preceding six months.[75]

At the same time, the responses of other markets to in Australia suggests that increasing government funding for a service attracts new entrants and increases the overall number of service providers.[76] Nous will evaluate variations in these rates as part of its sensitivity analysis (see Section 2.4).

4.4 Rate at which options have an effect

Timing is an issue when seeking to measure a regulatory option's impact. It is uncertain how quickly the full effects of each option will become evident.

For example, complaints mechanisms are likely to achieve their full effect through a general evolution of provider and participant attitudes. The overall process is relatively clear: as participants understand their right to complain more, they will lodge more complaints. This leads to a general improvement in service quality as providers respond to complaints and achieve insights. This general trend will, in turn, mean that participants expect better service, which will drive providers to undertake proactive actions in response to greater market demand for quality services.

It is difficult to predict, however, how long this process might take, and whether it will occur in multiple iterations.

To simplify the issue, Nous has adopted the same assumption that it made in relation to participant populations – that is, that the NDIS is fully implemented at the commencement of the modelling period ('year zero'). This assumption balances robustness with simplicity in the modelling: it would be almost impossible to make assumptions about the transition between similar regulatory interventions a regulatory regime that is nationality consistent.

The model therefore assumes that all options achieve their full effect immediately.

4.5 Labour costs for government activities

Many of the options that Nous is assessing require government to undertake activities that support providers or participants. These activities frequently involve a labour cost, and the impact analysis measures that cost. To populate the model, Nous sought data from States and Territories on the time and labour that various government entities devoted to different activities associated with registering providers and investigating complaints. However, this data did not address all the impacts in terms of government time for tasks in the impact analysis framework. Nous has therefore extrapolated from that data by assuming that comparable activities take the same time. A sample of the activities is set out in Table 24. Further information is set out in Appendix F.

[74] National Disability Services (2014), *State of the Disability Sector*, p. 9.
[75] National Disability Services (2014), *State of the Disability Sector*, p 12
[76] See: Windholz, E (2014), *NDIS beware: pink batts below!*, Alternative Law Journal, vol. 39, no. 2, pp. 89-93.

Table 24: Time spent by government and agencies performing relevant activities

Activity	Time spent
Conduct police check	0.6 hr / check
Review application for Working with Vulnerable People Check	1hr / check
Reviewing and negotiating restrictive practices in Behaviour Support Plan	6.5 hours / provider
Review if a provider has complied with NDIS code of conduct (in response to a complaint or adverse event)	6.5 hours / provider
Review a provider's basic registration application	6.5 hours / provider
Review separate registration for a provider who serve only participants who manage their own funds	7 hours / provider
Reviewing provision of restrictive practices where no BSP	10 hours / approval
Building participants' capacity to manage their own services	14 hours / person
Review of appeal against negative notice following Working with Children check	16 hours / appeal
Review a provider's quality evaluation	16 hours / provider
Review a provider's additional registration application	17 hours /provider
Review a provider's quality assurance	19 hours / provider
Investigating incidents related to Restrictive Practices	21 hours / provider

4.6 Additional assumptions

It is important to note a number of key assumptions that are relevant to the analysis. The assumptions are set out in Table 25.

Table 25: Overall assumptions relevant to the impact analysis

Context	Assumptions
Assessment of damages	CBAs assume that it is possible to reduce qualitative outcomes to a dollar figure. This can be a challenging undertaking, especially in the case of rights-based outcomes such as freedom from abuse or neglect. It can be particularly problematic in relation to the comparative valuation of harm. To attempt to quantify the value to participants of avoiding SAEs, Nous has used the Australian Institute of Criminology costs of crime estimates.[77] These valuations are based on medical data, lost output, and intangible costs. Importantly for the purposes of this analysis, the process of assessing intangible damages that result from crime and trauma is not the approach used in the assessment of damages in a civil case. Damages in civil litigation are generally significantly higher than the quantified harm that flows in general surveys such as those that the Institute of Criminology creates.[78] The upshot of this difference is that assaults that lead to investigation, litigation and therefore (potentially) compensation are 'worth' more money than assaults that do not have this possibility and, therefore, providers stand to gain more (in monetary terms) from reducing SAEs than participants. While some might argue that this is a perverse outcome, it is nevertheless an accurate one, within the confines of a quantified and monetised cost benefit analysis.
Cost neutrality	When government services benefit or facilitate the efforts of specific individuals (as opposed to the community at large), governments may seek to recoup the costs they incur in delivering those services. Nous has assumed that this policy exists in relation to two elements: • In Employee Vetting, State and Territory governments have a policy of charging potential employees for the cost of undertaking criminal record checks and reviewing the outcomes of those checks to decide on an application for WwC or WwVP clearance. On the basis of previous experience with expanding WwC clearances into new areas, we have assumed that employees make up 55% of the total applications.[79] • In Provider Registration, government will charge providers for the costs of administering applications generally, as well as the specific costs of engaging auditors and inspectors to assess the quality assurance processes and quality outcomes for high-risk providers (Option 3 and Option 4 of the Provider Registration element).
Discount rate	In order to present future values in real terms, Nous has applied a discount rate. This analysis complies with the OBPR's recommendation and utilises a discount rate of 7%. Alternative discount rates of 3% and 10% are used for the sensitivity analyses.[80] The OBPR has previously countenanced the possibility of utilising a different discount rate for social costs and benefits (as distinct from capital costs and benefits),[81] but Nous considers that it is appropriate to adopt a consistent discount rate for capital and non-capital costs and benefits.

[77] Smith, RG & Jorna, P (2014), 'Counting the costs of crime in Australia: A 2011 estimate', *Australian Institute of Criminology*.
[78] Ipp, D (2002), *Review of the Law of Negligence*, Final Report, p. 182.
[79] See Office of the Children's Guardian (NSW) *Annual Report* 2013–14, p 37
[80] OBPR (2014), *Guidance Note: Cost Benefit Analysis*, p. 7.
[81] OBPR (2007), *Best Practice Regulation Handbook*, p. 129.

Context	Assumptions
Economies of scale	For the purpose of these calculations, Nous has not assumed that governments will obtain economies of scale by consolidating operations into a single Federal body. There are two main reasons for this: 1. Most of these tasks are also performed for other human services besides disability services. For example, employee vetting occurs for all education, health services and aged care. As important as the NDIS is, it is only one aspect of the areas that governments regulate. Nous considers it inappropriate to assume that the NDIS will, of itself, generate momentum for the State and Territory governments to consolidate any of the relevant government functions into a single Federal body. 2. Even if relevant services were consolidated into a Federal body, many of the specific sources of government cost (such as performing criminal record checks or assessing applications for provider registration) arise from labour intensive work. The consolidation of services between these jurisdictions would create some savings, as administrative and support services (such as payroll) could be consolidated, but this would be comparatively minor. This is not to suggest, however, that the Framework will not achieve any savings for government or for providers. For example, if COAG adopts Option 3 or Option 4 of the Provider Registration element, providers will realise significant savings due to their no longer having to comply with multiple quality assurance frameworks.
Effect of changing regulation	The model assumes that the act of changing regulation, even in ways that would not have any formal effect on a provider's behaviour, will still have a (very small) effect. This is because the simple act of changing regulation itself causes people to consider their actions and proceed with (slightly) more care. For any single provider, the results are minimal, but the effect across the whole of the NDIS will be significant.
Minor incidents	Our model assumes that only participants derive direct benefits from avoiding minor incidents. Governments do not receive any benefit from a reduction in the rate of minor incidents, as these incident – by definition – are not serious enough to warrant government involvement or require government infrastructure (such as the courts) to redress. Similarly, minor incidents are sufficiently inchoate that providers will still need to deploy a full complaints and quality infrastructure, even if providers succeed in minimising their incidence. It should also be noted that the model assumes that all complaints are genuinely made, inasmuch as the provider's response to a minor incident will result in a real, albeit intangible, benefit for the participant; this would not be the case for a frivolous or vexatious complaint.
Self-regulation	Modelling provider responses under self-regulatory options is significantly more tenuous than is the case for options with greater government intervention. As government is not forcing providers' behaviour, the degree to which providers will comply with requirements may vary greatly. It is possible that providers will see benefits in achieving and maintaining best practice, and this is more likely in circumstances where there is strong competition, and the consequences for participants and funders are obvious and immediate. While the first of these options might be true for the NDIS, the second is not. Even significant differences in quality and safeguarding practices might not reveal themselves for years. As such, there is a real possibility that providers, despite their best intentions, might deviate from best practice in a self-regulated environment. For this reason, the model assumes that self-regulatory options will reduce SAEs, but will not necessarily to the same extent as options involving greater government intervention.
Volunteers	Governments will continue to deliver some services, such as community volunteers through the efforts of volunteers.

In addition to these assumptions, Appendix G sets out some additional assumptions specific to the calculation of impact. Appendix H sets out the input values.

5 Impact analysis results

This section details the results of the impact analysis for each element and each option within that element. It contains:

- a short explanation of how to interpret each type of analysis
- analysis of the options in each element.

5.1 How to read and interpret these results

To remind readers of the different components of the impact analysis, Table 26 below provides a brief summary. This can serve as a quick reference while reading the analysis of each option later in this section.

Table 26: Key components of the impact analysis for each option

Form of impact analysis	Summary	Tips for interpreting
Cost benefit analysis 1: Distribution analysis	The costs and benefits of each option are reported as a NPV, and broken down by stakeholder and by jurisdiction. (see Section 3.1 above for further explanation)	A positive NPV indicates that benefits are greater than costs. A negative NPV indicates that costs outweigh benefits. Please note that the size of the NPV does not, of itself, indicate the actual magnitude of the costs or benefits. A low, positive NPV might indicate small costs and benefits, or it might indicate that very significant benefits overcome very significant costs.
Cost benefit analysis 2: Sensitivity analysis	The NPV calculations are then subject to a sensitivity analysis to test variations in: • Discount rate • Effectiveness • Market flux • Best case/worst case scenario (see Section 2.4 above for further explanation)	If the option retains a positive NPV across the different dimensions of sensitivity, the results are robust and variations in that dimension will not prevent costs outweighing benefits.
Regulatory burden analysis	Analysis that focuses only on the direct regulatory costs that the options impose (regulatory burden), to determine whether the options impose a greater or lesser regulatory burden than the base case.	The standard framework differentiates between individuals, community organisations and businesses, as all of these stakeholder groups might bear a regulatory burden if government introduced a specific Option. However, in the context of this impact analysis and these options, neither individuals nor community organisations would actually be subject to costs. The burden is an average annual cost over the first ten years. The burden is compared with potential offsets, being in this case the prevailing regulatory burden in the base case. In other words, this analysis may show that, even where an option has a high regulatory impost, it may not

Form of impact analysis	Summary	Tips for interpreting
		be high as the burden that businesses (i.e. providers) currently experience.
Competition analysis	Analysis of the degree to which the option will negatively impact competition in the market to provide disability services. (see Section 2.6 for overview)	This analysis follows the suggested approach by the OBPR, and seeks to understand the extent to which each regulatory option restricts competition. This emphasis is appropriate given that most options will apply to all providers. We nevertheless also point out those options that have clear potential to enhance competition.

The **analysis of each element** begins with:

- a summary of the CBA for the element – centred on the NPV results but also referencing the qualitative impacts of options in the element
- background on the base case across the nation – this analysis includes observations from experts and outcomes from the provider survey
- specific assumptions that inform analysis of the element – these are important to understand how Nous has calculated the NPV. They reflect the issues that are considered significant for the purposes of estimating the overall, comparative costs over 20 years and across all the jurisdictions.

Then each option within the element is considered. We present, in turn, the:

- distribution analysis of the NPV results for the option
- sensitivity analysis of the NPV results for the option
- regulatory burden analysis.

Finally, in each element, we present **our findings on**:

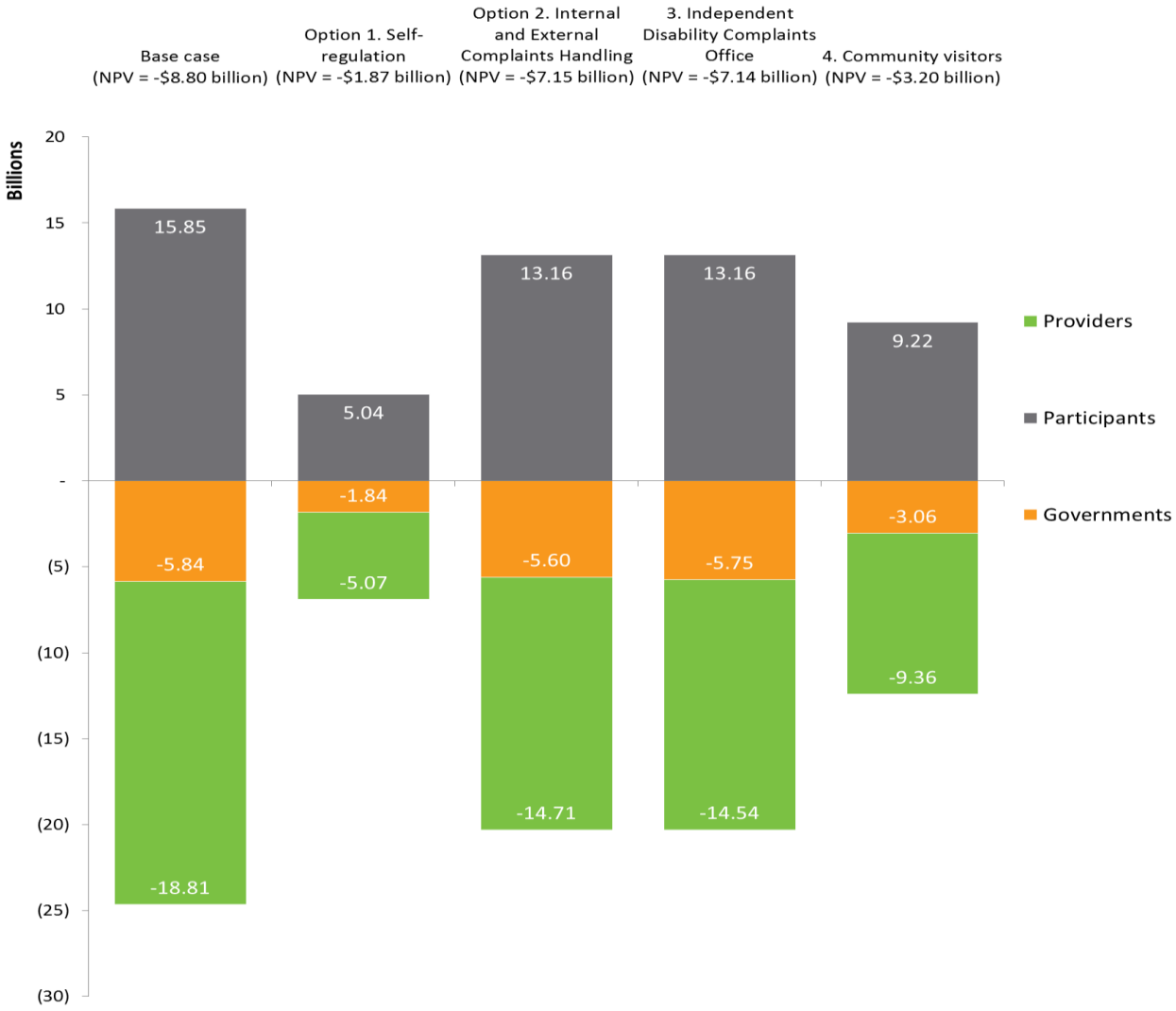
- which option or combination of options produce the best NPV outcome
- the competition impacts of options across the element.

5.2 Complaints

This impact analysis considers complaints to be a positive factor in ensuring that providers deliver a high quality service. However, the logic of quantification and monetisation inherent in a CBA produces negative overall NPVs for each option in this element (including for the base case). This is because the direct effect of a robust complaints system is to focus attention on areas of dissatisfaction, and because the broad benefits of complaints systems are generally indirect and so do not appear explicitly in the results.

This is not to say that benefits are not captured at all. On the contrary, participants receive significant benefits due to the general reduction in SAEs and (less frequently) receiving redress for past SAEs. However, providers incur costs in responding to complaints and making redress for proven SAEs, and governments incur costs in investigating complaints and facilitating the litigation of complaints. This produces very large, negative NPVs for options in this element (see Figure 16). These results are explained further below.

Figure 16: Summary of NPV for Complaints Element



It should be noted that the NPV is significantly greater than the regulatory burden, which amounts to no more than $2.8 million per annum for the base case, and $2 million per annum for any single option. The negative NPV almost entirely results from improved scrutiny of SAEs, which results in increased redress costs.

5.2.1 Background

Section 1.4.1 of this report set out how a complaints mechanism enables valuable feedback and can empower consumers. Where complaints relate to safety, this will trigger a response to reduce risk of harm to participants. For providers, complaints can provide invaluable information on what can be done to improve service quality.

It is important to note that many of the effects that Section 1.4.1 describes are indirect. This is potentially problematic, as the CBA model maximises specificity and certainty by concentrating on direct and material costs and benefits.[82] The emphasis on direct and material costs and benefits will have a particular effect on analysis of this element's impact.

Having robust complaints mechanisms in place can be expected to give participants a stronger consumer voice and to focus attention on participants' interests and needs.[83] Complaints processes also sharpen accountability which, in turn, is expected to improve service quality and reduce the likelihood of an adverse event. The mechanism by which they do this is through reporting on the negative experiences that have occurred. As such, the direct effect of a robust complaints system is that it will increase the amount of time that providers spend investigating and responding to allegations of inappropriate conduct. This will affect the CBA, at least as far as this time is quantified and monetised.

The overall impact analysis does not consider an increase in complaints to be a negative outcome, but rather as an indication that participants understand their right to complain. Complaints should ultimately lead to a general improvement in service, but through a variety of direct and indirect means. Therefore it is important that the negative NPV be weighed against the non-monetary benefits (such as increased confidence in providers' responsiveness) that a robust complaints scheme can deliver.

Assumptions

The general assumptions that underpin our overall approach to the CBA are set out in Section 4 above. There are two other assumptions worth noting at this stage:

1. The analysis assumes that each option in the complaints element applies to all, and only, NDIS-funded services[84]
2. The analysis assumes that any external complaints body will focus only on the disability-sector.[85]

Other assumptions, relevant to the calculation of benefits, are set out in Table 12 of Appendix G.

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[82] See section 3.1.

[83] Source: Discussion with Disability Service Commissioners, Thursday 22 April 2015

[84] The Consultation Paper states that a complaints scheme could apply to:

- all NDIS-funded services
- a subset of supports that the NDIS funds, or
- all supports specifically targeting people with disability, irrespective of whether the support is funded by the NDIS.

See Consultation Paper, pp. 51-52. Nous has chosen the first option, on the basis of the difficulty in estimating the boundaries of the second and third option.

[85] Nous' analysis, based on administrative data provided by State and Territory Governments, indicates that rates of complaints per thousand people differ by approximately 30% between jurisdictions with a disability-specific complaints body and those complaints bodies that have a broader remit.

Base case

Figure 4 on page 30 sets out the relationship between each jurisdiction's existing formal regulatory regime and the options in this element. Almost all jurisdictions have adopted a regime that combines Option 2 and Option 3.[86] The base case NPV amounts to -$11.93 billion, which is consistent with the overall logic of quantification and monetisation involved in this combination. Given the relative uniformity of the base case regimes, the distribution of costs and benefits across jurisdictions is essentially a function of current provider and participant numbers (see Figure 17 and Table 27).

Figure 17: Breakdown of NPV for the complaints base case by options and jurisdiction[87]

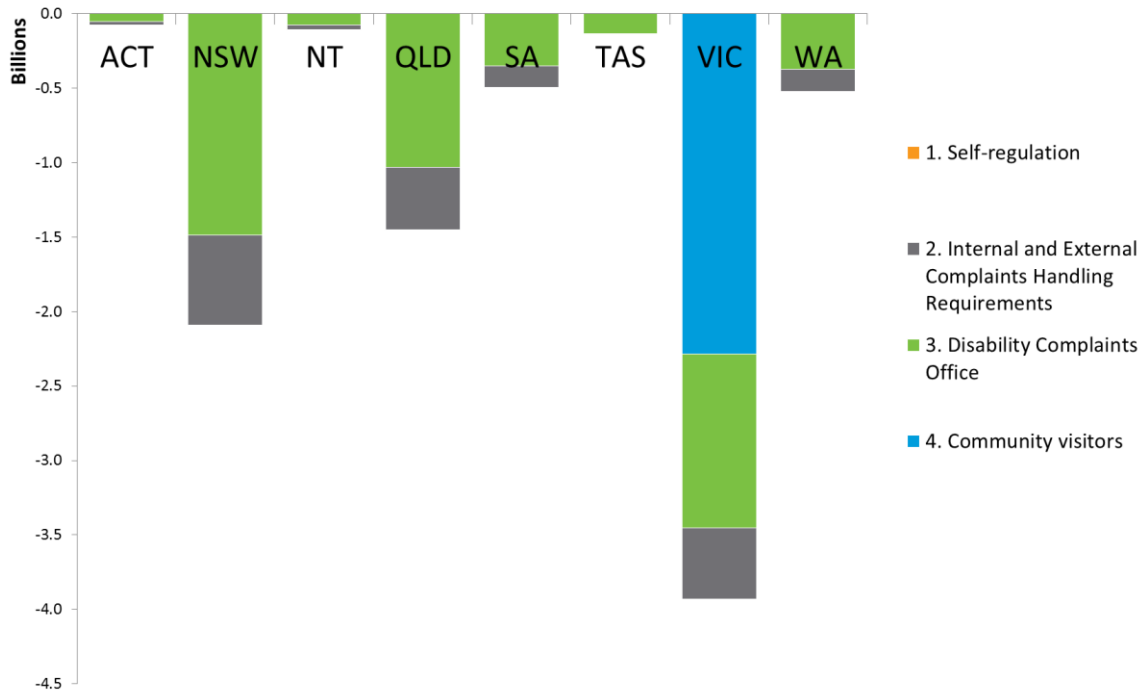


Table 27: NPV base case for complaints by options and jurisdiction (-$ millions)

Jurisdiction	1. Self-regulation	2. Internal and External Requirements	3. Disability Complaints Office	4. Community visitors	Total Base Case
ACT		-$22.1	-$53.1	-	-$75.2
NSW		-$605.5	-$1,487.0	-	-$2,092.5
NT		-$30.3	-$74.4	-	-$104.7

[86] Note that, as Figure 4 sets out, some of the current state regulatory systems have authorised a more general body, such as an Ombudsman or Health Complaints Commissioner, to perform this function.

[87] Note South Australia does have a Community Visitor Scheme for disability accommodation services but it is not recognised as a 'complaints' function so has not been included in the base case analysis. Similarly, NSW and Queensland have a form of community visitor programs but due to data constraints these programs has been used to inform the FTE required of the respective disability complaints offices.

Jurisdiction	1. Self-regulation	2. Internal and External Requirements	3. Disability Complaints Office	4. Community visitors	Total Base Case
QLD		-$419.4	-$1,030.3	-	-$1,449.7
SA		-$142.8	-$350.5	-	-$493.4
TAS		-	-$135.9	-	-$135.9
VIC		-$475.9	-$1,168.4	-$2,285.7	-$3,930.0
WA		-$151.4	-$371.8	-	-$523.2
Total		**-1,847.5**	**-4,671.3**	**-5,409.6**	**-8,804.5**

5.2.2 Analysis of options

Option 1 – Self-regulation

This option would involve very low compliance costs for providers as they would have full flexibility as to the complaints system they implement. Nous' modelling found that providers would save $27.7 million per annum in compliance costs under a self-regulation model.

However, Option 1 is less likely to broadly deliver the intended benefits. All the other options in this element create an external party that reviews providers' mechanisms. In the absence of such a party, providers have less motivation and support to maintain a robust system. Complaints would rely on individual providers' skill and drive to implement a rigorous and responsive complaints process. This would reduce the volume of complaints and increase under-reporting. As a result, it can be safely assumed that many participants will miss out on the benefits that more formal and tailored complaints processes are likely to bring.

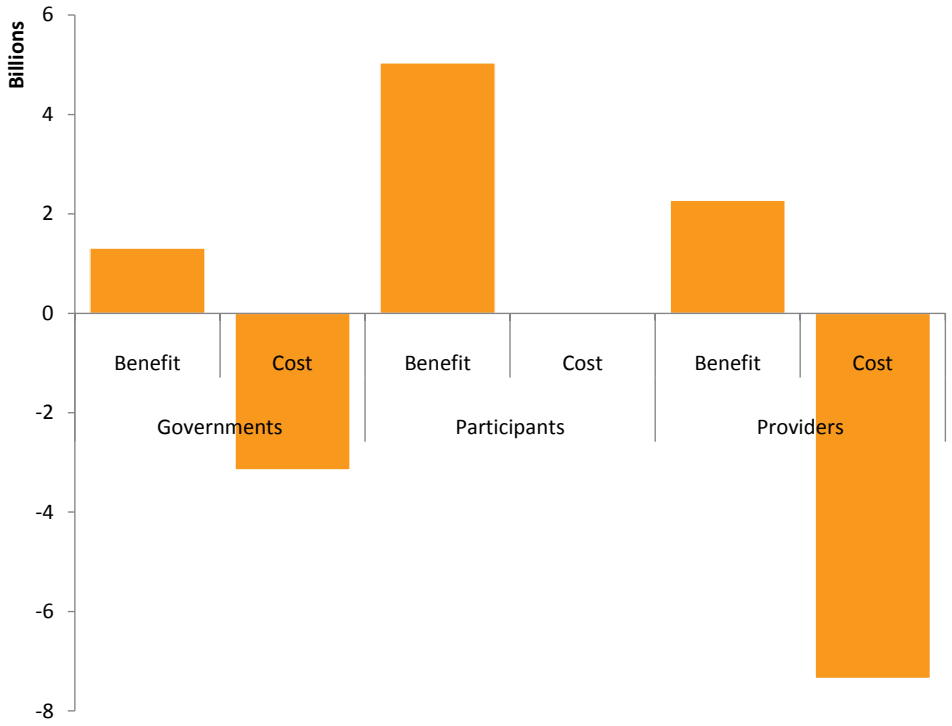
Modelling the costs and benefits of Option 1 generates a negative NPV, totalling -$1.87 billion. This negative value results from the costs to providers of redressing SAEs. Because Option 1 delivers lower rates of redress, it follows that the resulting NPV is the smallest negative figure of all the options in this element. This is a superficially perverse result, but it is appropriate. The primary driver of negative NPVs in the CBA are the redress costs. If self-regulation is least effective in stimulating redress for unsatisfactory conduct, then it will also generate the smallest amount of redress costs.

It is important to note that Option 1 is a solitary regulatory intervention: it cannot co-exist with other formal interventions. This means that Option 1's costs and benefits must be assessed in isolation and cannot be considered as part of a potential package of options in this element.

Distribution analysis

The NPV for Option 1 is **-$1.87 billion**. The distribution analysis (see Figure 18) sets out how the costs and benefits are distributed to provide this overall result. As would be expected, participants receive significant direct benefits from the complaints process, while government and participants receive some benefits (mainly in the form of harms avoided), but significantly more costs. For government, these costs are associated with providing the infrastructure necessary to support investigation, prosecution and / or litigation. For providers, these costs are incurred during the same processes, and from having to pay compensation to a participant who successfully seeks redress.

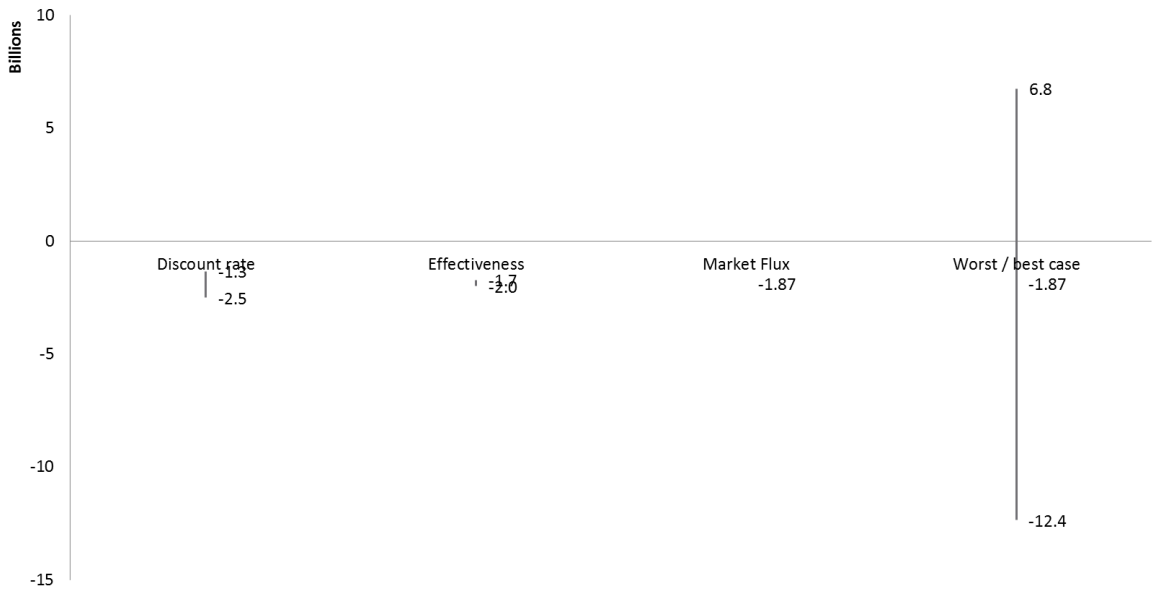
Figure 18: distribution of costs and benefits: Option 1 of complaints



Sensitivity analysis

Sensitivity analysis indicates that this option maintains a negative NPV across three of the dimensions of sensitivity (discount rate, effectiveness, market flux: see Figure 19.) The negative NPV crosses zero for the best case scenario (reaching a positive NPV of $6.8 billion), which indicates that there is some possibility that the ratio of costs and benefits is slightly less negative than it appears in the main analysis. The overall negative NPV result can nevertheless be considered quite robust.

Figure 19: Sensitivity analysis: Option 1 of the complaints element



Regulatory burden analysis

Table 28 sets out the results of regulatory burden calculations and cost offsets for Option 1 in complaints. Participants do not incur any regulatory burden under this element. If Option 1 imposes a regulatory burden on a community organisation, it will be because the community organisation runs a business that delivers disability services.

As Table 28 indicates, the regulatory burden associated with Option 1 amounts to **$9.9 million**. There is no base case offset specifically associated with Option 1, as none of the jurisdictions has in place an Option 1 equivalent as part of the current regulatory regime. However, given that Option 1 can only be deployed as a solitary option (i.e. it cannot work in conjunction with other options in this element) it could theoretically replace the base case and thereby create a 'saving'. The regulatory burden for the base case is calculated as **$37.6 million**.

Table 28: Regulatory burden and cost offset estimate table – Option 1 of Complaints

Average annual regulatory costs for Complaints and Oversight (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$9.9 million	nil	$9.9 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$37.6 million [88]	nil	$37.6 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

[88] This offset would occur if COAG replaced the current regulatory regimes for disability services with a self-regulatory model.

Option 2 – Internal and external complaints handling requirements

This option requires providers to implement complaints processes that meet best practice, and to maintain an industry complaints body. This option is likely to increase the number of complaints and improve responsiveness.

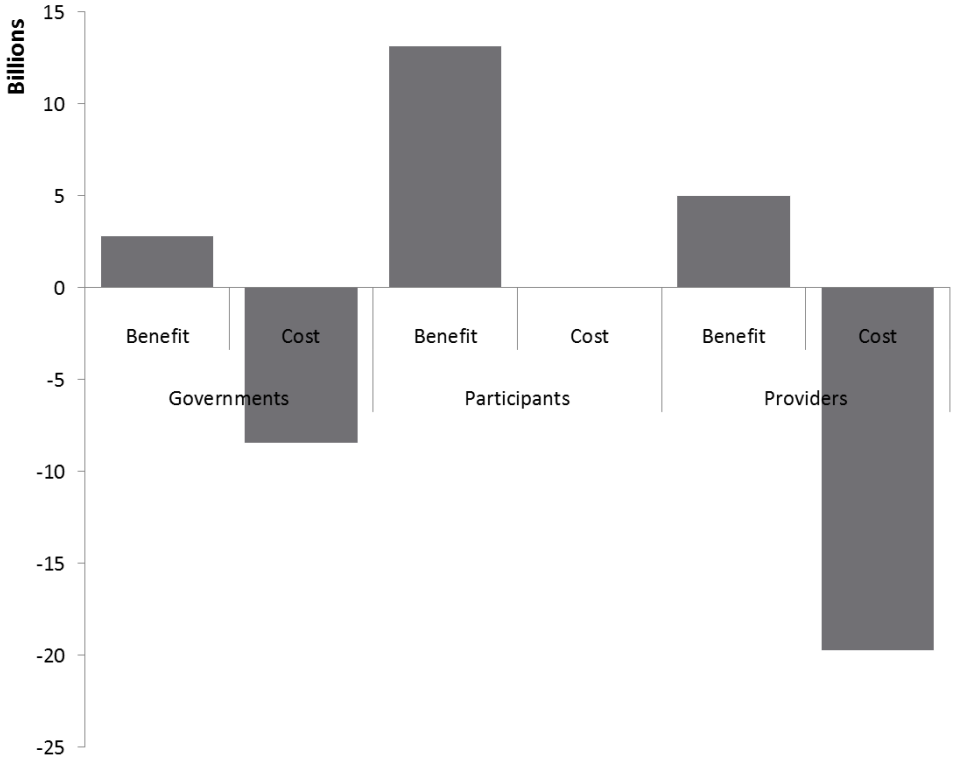
However, this option assumes a contractual relationship between providers and the complaints body, which can create a potential conflict of interest (as the complaints body relies on the provider's ongoing satisfaction with the way that the complaints body manages complaints). This potential conflict of interest is likely to reduce participants' confidence that complaints will be dealt with in a respectful and responsive manner.

Option 2 generates a negative NPV of **-$7.15 billion**. This is very close to the NPV figure to Option 3, which reflects the similarities between how the two options actually intervene to improve service quality. Both options seek to improve the quality of internal responses to complaints, and provide external oversight for complaints that providers have not dealt with to participants' satisfaction.

Distribution analysis

Figure 20 illustrates how the costs and benefits were distributed between government, participants and providers to provide this overall result. Governments and providers bear significant costs. Providers' costs are incurred through compliance with protocols and in the process of redressing SAEs. Governments' costs are associated with providing infrastructure relevant to investigating and litigating SAEs.

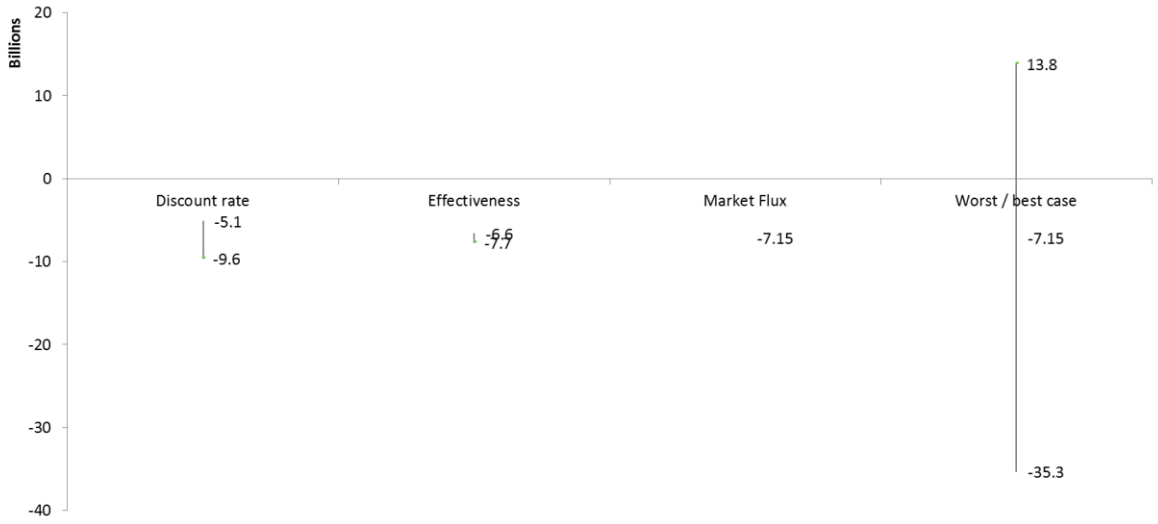
Figure 20: Distribution of costs and benefits: Option 2 of Complaints



Sensitivity analysis

Sensitivity analysis indicates that this option maintains a positive NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenario: see Figure 21). These figures therefore can be considered robust.

Figure 21: Sensitivity analysis: Option 2 of complaints



Regulatory burden analysis

Table 29 sets out the results of regulatory burden calculations and cost offsets. It indicates that the regulatory burden associated with Option 2 amounts to $43.4 million. Option 2 would exceed the regulatory burden of the base case.

Table 29: Regulatory burden and cost offset estimate table: Option 2 of Complaints

Average annual regulatory costs for Complaints option 2(from business as usual)				
Change in costs	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total	$43.4 million	nil	nil	$43.4 million
Cost offset	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	$37.6 million [89]	nil	nil	$37.6 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

[89] This offset would occur if COAG replaced the current regulatory regimes for disability services (only) with Option 2.

Option 3 – Independent statutory complaints function

This option has the potential to significantly increase participants' awareness of, and confidence in, the complaints processes. The need to respond to complaints equips providers with valuable insights on how they can improve their service quality. Moreover, advice from experts suggests that these insights translate into tangible changes in processes and procedures at a provider level, which have a positive impact on service quality.

An evaluation of the Victorian Disability Services Commissioner's complaints process found a 66% rise in annual reported complaints since the function was established in 2007.[90] The Commissioner in that jurisdiction receives 9.26 complaints per 1,000 disability clients per annum, compared to on average 2.64 complaints per 1,000 disability clients in jurisdictions without an external complaints body.[91] Approximately 59% of respondents agreed the process improved the level of awareness of the importance of complaints reporting in their service.[92]

It should be noted that, although many jurisdictions already have disability-specific complaints bodies, in some jurisdictions complaints about disability services are dealt with by bodies with a broader remit. In such jurisdictions, we would anticipate an increased cost to government to a disability services-specific complaints body.

Distribution Analysis

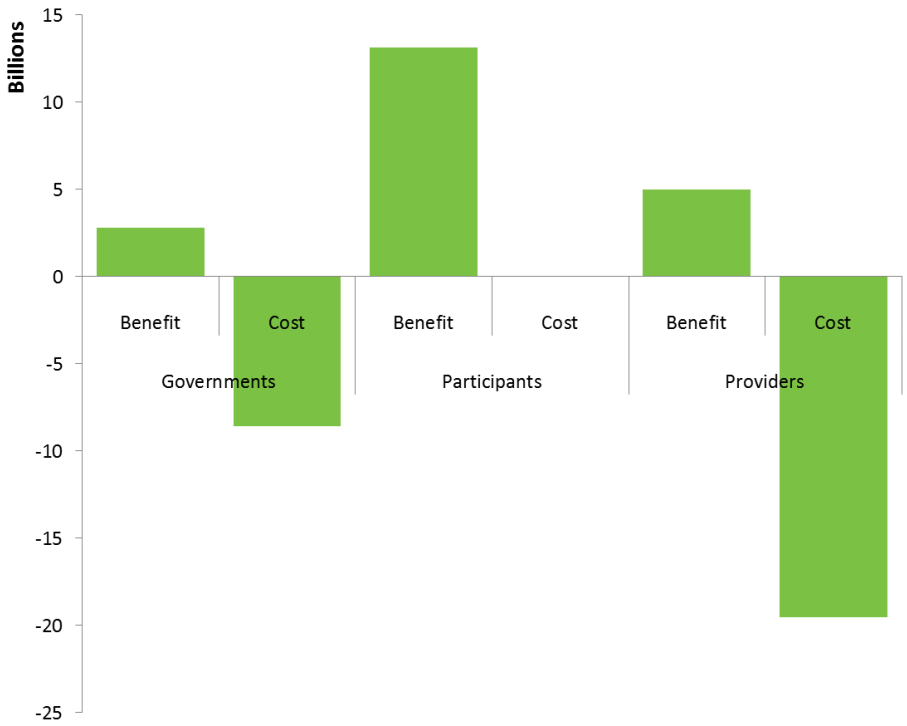
As noted above, Option 3 generates a negative **NPV of -$7.14 billion**. The distribution of costs and benefits in Option 3 is quite similar to Option 2 (see Figure 22), as the redress rates, and the rates of adverse incident are more or less the same across the five categories of SAE. This means the differences the two options arise due to variation in the costs of compliance (which are greater for providers under Option 2 and greater for government under Option 3).

[90] Disability Services Commissioner Victoria (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework*, Paper 04/2015, p. 6.

[91] Source: relevant Annual Reports. Note that these rates are for complaints received, not complaints resolved. Please note that these figures are for the main complaints bodies relating to disability services.

[92] Disability Services Commissioner Victoria (2015), *Proposal for a National Disability Insurance Scheme Quality and Safeguarding framework*, Paper 04/2015, p. 6.

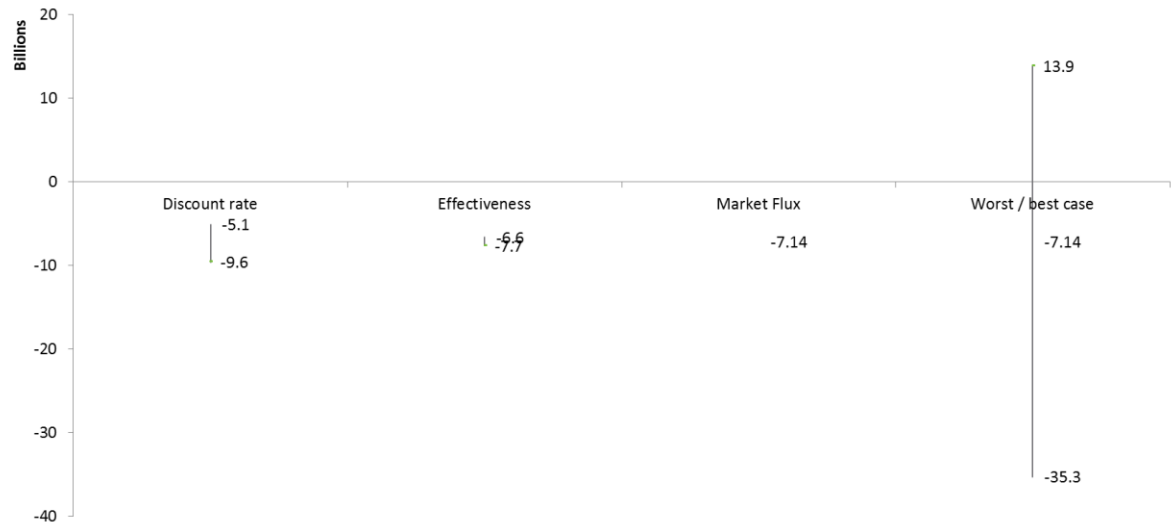
Figure 22: Distribution of costs and benefits: Option 3 of complaints



Sensitivity analysis

Sensitivity analysis indicates that this option maintains a positive NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenario). See Figure 23.

Figure 23: Sensitivity analysis: Option 3 of complaints



Regulatory burden analysis

Table 30 sets out the results of regulatory burden calculations and cost offsets. It indicates that the average annual regulatory burden of Option 3 amounts to $21.7 million. This cost is lower than the regulatory burden for Option 2, because Option 2 would impose additional fees associated with membership of the private external complaints monitoring body. Option 3, as a government body, would not impose these fees directly. The regulatory burden for Option 3 would be completely offset by the regulatory burden of the base case.

Table 30: Regulatory burden and cost offset estimate table: Option 3 of Complaints

Average annual regulatory costs for Complaints and Oversight (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$21.7 million	nil	$21.7 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$37.6 million	nil	$37.6 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 4 – Community visitors

Although COAG's Consultation RIS did not include community visitors as a formal option for investigation, Nous was asked to analyse the impact that a community visitor scheme would have on the NDIS.

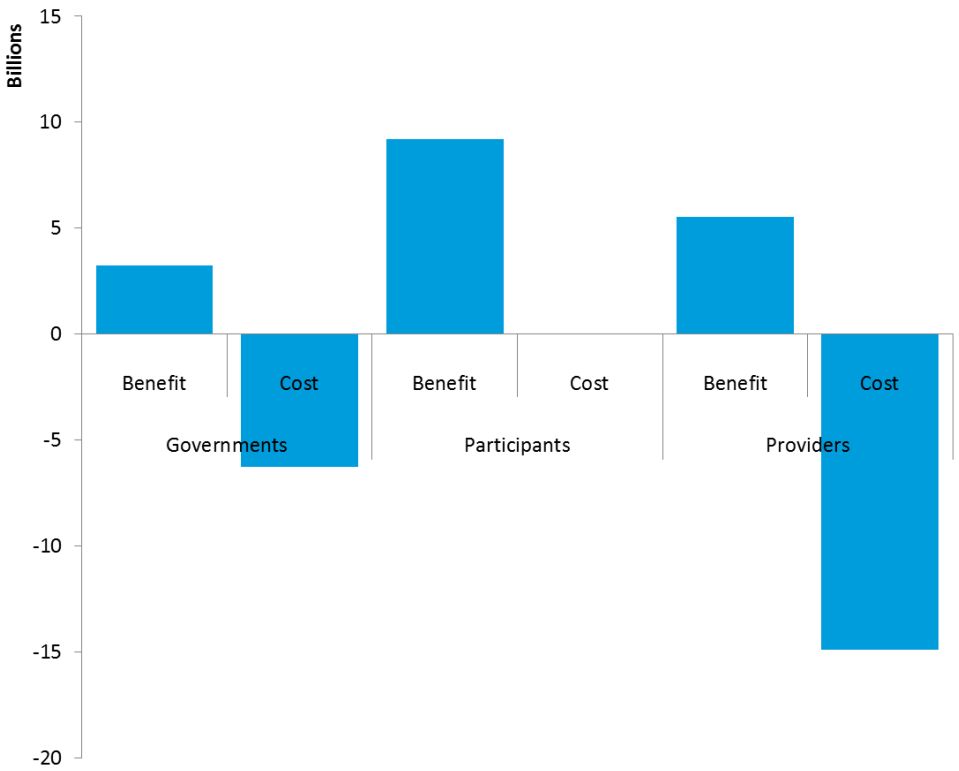
A community visitor scheme can provide additional feedback and advice to providers. Community visitors obtain participants' views and learn about their experiences, and then advocate on their behalf. This can include seeking redress for SAEs. Feedback from community visitors can also identify issues at a service level, enabling regulators to follow up with service providers.

In the provider survey, 59% of respondents who received community visitors indicated that the assistance by community visitors had been helpful or very helpful in resolving complaints. Providers also indicated that the additional workload to deal with community visitors amounted to no more than 0.048 FTE per provider per annum.

Distribution analysis

Option 4 generates a negative NPV of -$3.20 billion. Much of the work in undertaking visits is performed by volunteers at no cost to government, and this generates some savings to government. However, the costs of responding to and supporting investigations are significantly greater than the costs of administering the system (see Figure 24) and drive the overall CBA into negative figures, even accounting for the benefits that the option is likely to generate.

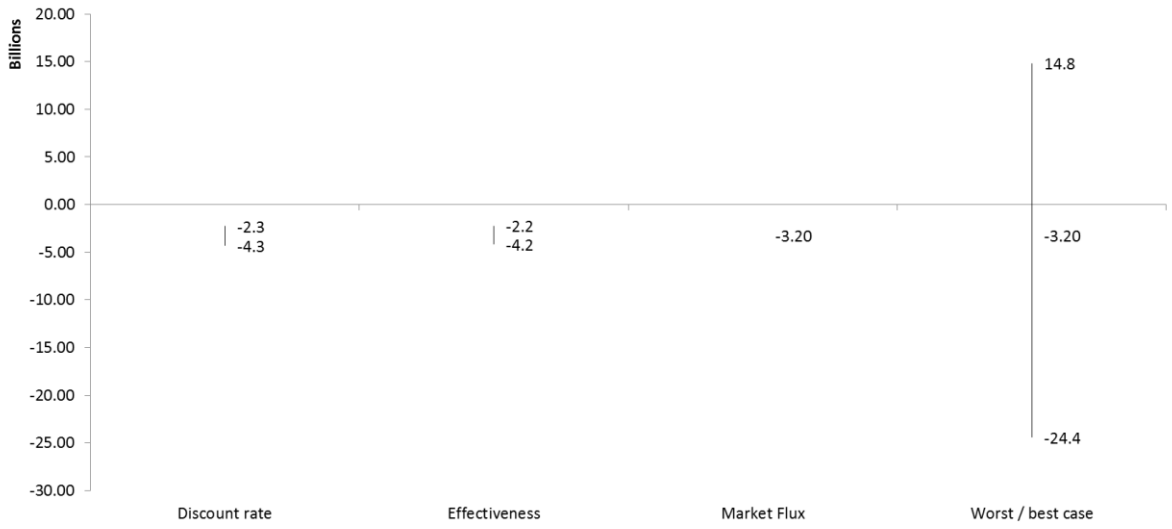
Figure 24: Distribution of costs and benefits: Option 4 of complaints



Sensitivity analysis

Sensitivity analysis indicates that this option maintains a negative NPV across three dimensions of sensitivity (discount rate, effectiveness and market flux). See Figure 25. The NPV becomes positive using best case scenario projections (costs decrease by10% and benefits increase by 10%), which indicates that the analysis is not entirely robust, but would only be incorrect if there were systemic problems with the way we have analysed Option 4's direct costs and benefits.

Figure 25: Sensitivity analysis: Option 4 of complaints



Regulatory burden analysis

Table 31 sets out the results of regulatory burden calculations and cost offsets. It indicates that the regulatory burden of Option 4 falls exclusively on providers and amounts to $52.8 million on average. This cost would exceed the regulatory burden associated with the base case.

Table 31: Regulatory burden and cost offset estimate table: Option 4 of Complaints

Average annual regulatory costs for Complaints and Oversight (from business as usual)				
Change in costs	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Total	$52.8 million	nil	nil	$52.8 million
Cost offset	**Business**	**Community organisations**	**Individuals**	**Total, by source**
Agency	$37.6 million	nil	nil	$37.6 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not (fully) offset ☐ Deregulatory—no offsets required

5.2.3 Maximising Net Present Value

Governments could choose to deploy Option 3 and Option 4 at the same time. The combination of option 3 and option 4 across the whole of Australia yields a total NPV of -$15.41 billion, including total costs of $49.39 billion, and total benefits of $33.98 billion.

This compares with the base case NPV of -$6.94 billion, which reflects the fact that most of the jurisdictions have regulatory regimes that include these options.

Table 32: Distribution of NPV per option in the complaint element, by stakeholder group ($billion)

		1: Self-Regulation	2. Minimum standards	3 External Office	4. Community Visitors	Option 3 and Option 4
Governments	Benefit	$1.31	$2.83	$2.83	$3.24	$6.07
	Cost	$3.15	$8.43	$8.59	$6.30	$14.89
	Net	-$1.84	-$5.60	-$5.76	-$3.06	-$8.82
Providers	Benefit	$2.27	$5.01	$5.01	$5.57	$10.58
	Cost	$7.34	$19.70	$19.60	$14.90	$34.50
	Net	-$5.07	-$14.69	-$14.59	-$9.33	-$23.92
Participants	Benefit	$5.04	$13.16	$13.16	$9.22	17.33

		1: Self-Regulation	2. Minimum standards	3 External Office	4. Community Visitors	Option 3 and Option 4
	Net	$5.04	$13.16	$13.16	$9.22	17.33
Total		-$1.87	-$7.13	-$7.19	-$3.17	-$15.41

5.2.4 Competition analysis

The competition analysis indicates that this element primarily affects entry to the disability services market, as new providers will have to develop complaints systems that comply with regulatory requirements.

However, while the formal competition analysis focuses on restrictions to competition, requiring providers to collect and report complaints will also improve market information, which will make the market more efficient – through better purchasing decisions based on better information.

The key comparative findings of the competition analysis are outlined in Table 33. Each of the three key lines of inquiry for the competition analysis is then discussed in more detail.

Table 33: Competition analysis – complaints handling

Key LOE	Topic	Question	Option 1	Option 2	Option 3	Option 4
1. Does the option impact on business market entry and operations?	**Market entry**	Does the option impose regulatory barriers to market entry?	◔	◑	◕	◔
		Does the option increase costs to market entry?	◔	◕	◑	◔
	Provider operations	Does the option limit the ability of some types of providers to provide some services?	◔	◕	◑	○
2. Does the option inhibit competitive behaviours?	**Customer access to services**	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?	○	○	○	○
		Does the option reduce providers' ability to adapt / innovate their service offer	○	○	◑	○
	Market information	Does the option limit providers' freedom to advertise or market their offer?	○	○	○	○
		Does the option limit providers' ability to set independent prices?	○	○	○	○
		Does the option limit the information available to consumers?	○	○	○	○

Key LOE	Topic	Question	Option 1	Option 2	Option 3	Option 4
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?	○	○	○	○
3. Does the option generate a net social benefit?			Low	Med	High	Med

Key – Impact on competition

○ No impact ◔ Minimal impact ◑ Moderate impact ◕ Significant impact

Impact on market entry

Barriers to market entry involve both regulatory requirements and additional costs.

As a voluntary scheme, Option 1 does not impose any additional *regulatory* barriers to market entry, as government is merely encouraging providers to adopt best practice in their internal complaints systems. Each of Option 2 and Option 3 would increase regulatory barriers (and associated costs) to entry through the addition of minimum standards for complaints handling as a condition of registration. Option 4 does not involve any regulatory barrier or additional costs, beyond requiring providers to participate in the community visitor's scheme.

The costs of this element will be lowest for Option 1, as the system is optional. Options 2, 3 and 4 providers will still have to implement their own complaints mechanism, but procedures will be necessary also to deal with any discussions or investigations involving the external body.

Option 2 would likely have the greatest increase in costs to market entry, as providers would be required to enter into contractual arrangements with an industry body or third party to demonstrate they have established a compliant external complaints handling system. The internal system established would be less prescriptive than under Option 3, which means that providers will incur additional costs as they explore different options for designing their own processes.

Option 3 is likely reduce costs to providers as the body would develop template (or prescribed) complaints management process, education and training. As noted, such products will reduce the need for providers to develop such processes in-house. Additionally, the body would be able to generate significant economies of scale through operation at a sectoral level.

Option 4 is unlikely to pose any additional costs at time of market entry: the costs on providers will be felt in increases in ongoing operational costs when responding to community visitors.

Provider operations

Option 2 has the greatest impact on provision of services for certain providers. Smaller providers may find it more difficult to negotiate individual arrangements with external complaints-handling partners. Particularly when the number of participants serviced by a provider is low, providers are unlikely to be able to leverage any economies of scale in negotiating such arrangements. It may also be more difficult for smaller providers to implement adequate internal complaints handling processes.

Competition process

Although an independent complaints handling body will not reduce the *opportunity* for innovation in complaints handling, there is a reasonable likelihood that such a body would reduce the *incentive* for providers to develop new and innovative complaints handling mechanisms. Once a regulatory body has the power to decide what processes complies with the relevant regulation, the regulated community

often adopt the process quite passively, to minimise the risks associated with developing a new – and potentially non-compliant – process. This is especially the case for small and medium sized enterprises.

No option proposed reduces providers' freedom to advertise or set independent prices. Similarly, none of the proposed options restrict the information available to participants, or restrict customer choice. Indeed, as discussed above, introduction of a regulatory complaints system can be expected to increase the baseline information available to participants.

Social benefit

As noted above, the social benefits of a complaints system derive from the requirement to collect and report complaints. This should improve market information, which will make the market more efficient through better purchasing decisions based on better information. It also creates a feedback loop enabling providers to improve the quality of their services.

5.3 Employee vetting

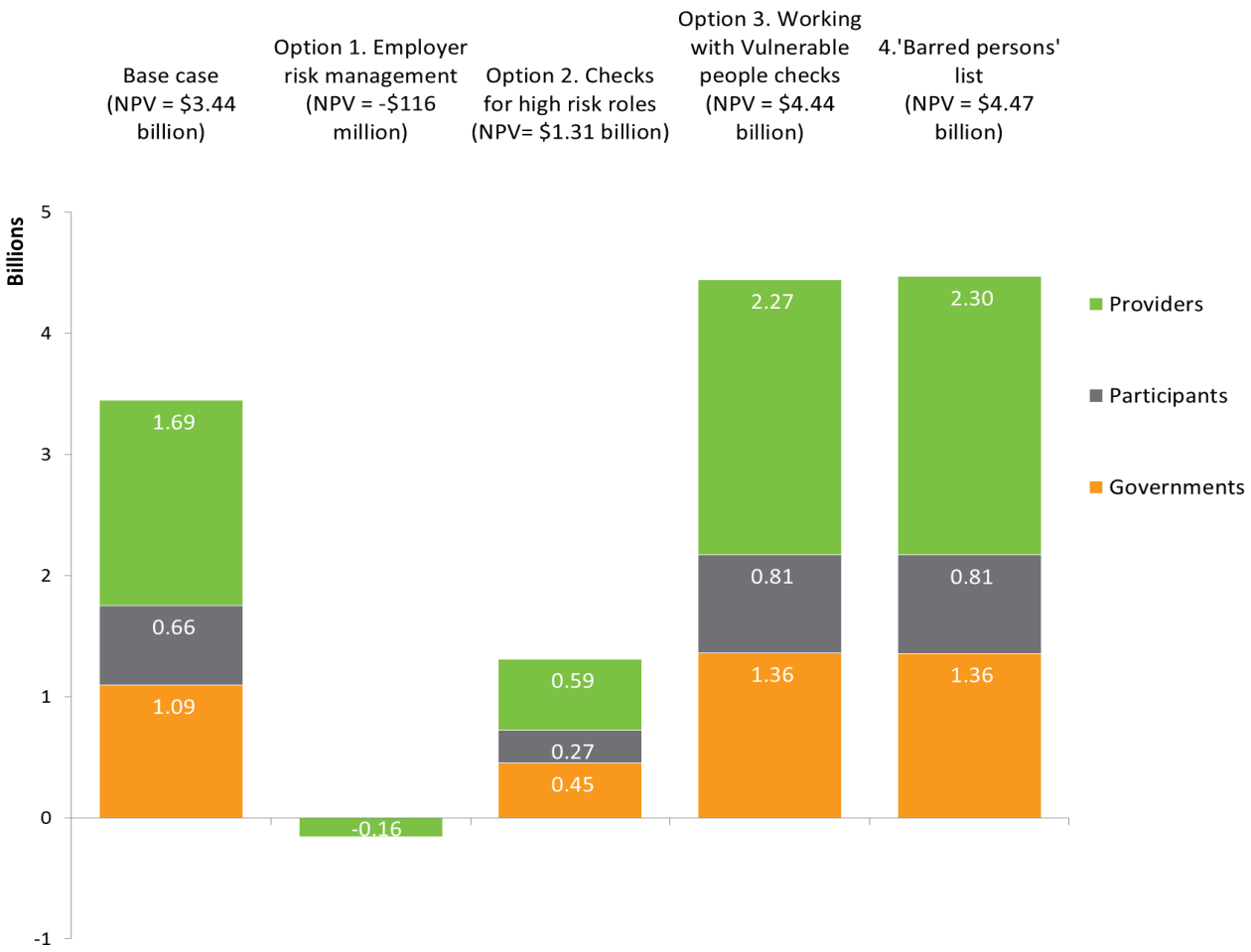
Government regulation of employee vetting increases the protection available to participants by expanding the areas of potential employees' lives that are subject to scrutiny. However, there is a significant likelihood that providers will continue to seek access to potential employees' criminal records. This means that the options centred on the introduction of WwVP or a barred persons list are likely to complement, rather than replace, this traditional form of scrutiny.

Option 1 of this element is the only option that delivers a negative NPV. Option 1 and Option 2 both impose significant costs on providers, because they decentralise the process by which providers decide which potential employees to hire.

By contrast, options 3 and 4 centralise risk management with government and therefore achieve economies of scale, which translates into a benefit for providers (see Figure 26).

Option 2 achieves broadly similar reductions in SAEs to Option 3 and Option 4 but, unlike those two options, Option 2's benefits must be weighed against the costs of a decentralised approach.

Figure 26: Summary of NPV for employee vetting element



5.3.1 Background

Section 1.4.2 discusses how employee vetting is an important proactive step to minimise the risk of adverse incidents. The primary locus of direct risk for participants accessing supports is the individual employee; if government can implement a more rigorous and consistent employee vetting process, it can be expected that there will be a reduction in SAEs.

However, research is mixed on the overall effectiveness of criminal background checks.[93] There are known instances of disability workers who have been dismissed for misconduct who had criminal records,[94] but many offenders don't have any previous criminal record and a criminal background check would not have prevented them from gaining employment.

In addition, regulatory intervention appears to have little effect on employer behaviour. More than three quarters (77%) of respondents to the provider survey indicated that they require potential employees to provide details of their criminal history, in addition to clearance following a WwVP or WwC check. Eighty-two per cent (82%) who reported their intentions for the future indicated that they would continue the practice. [95] This strong response existed even for those providers who:

- offered services to children
- operated in jurisdictions where a WwC regime had been in place for some time.

Government regulation therefore increases the protection available to participants by expanding the areas of potential employees' lives that are subject to scrutiny, but it does not deliver a level of scrutiny that providers consider sufficient. This might be because these checks do not provide detailed information on a potential employee's past: the WwVP check is a yes or no answer. Another possible reason is that a process centring on a criminal record check provides outcomes that are (almost) immediate and concrete: the criminal record provides immediate information that providers can use to make an important decision more or less on the spot. Table 34 summarises the NPV calculations, including comparison of costs and benefits, across all of the stakeholder groups. Figure 27 also illustrates this comparison.

The base case reflects a mix of measures that are currently in place. Note that Option 1 is not represented in the base case as it is not currently used by any jurisdiction. Option 2 is in place in all jurisdictions except South Australia and Tasmania. A version of Option 3 is in place in all jurisdictions, because all jurisdictions have a WwC check, and WwC checks will affect participants under 18 in the same way as universal WwVP checks. Option 4 is only in place in Victoria.

[93] Parenting Research Centre & University of Melbourne (2015), *Scoping Review: Evaluations of pre-employment screening practices for child-related work that aim to prevent child sexual abuse*, commissioned by the Royal Commission into Institutional Responses to Child Sexual Abuse, p. 28.

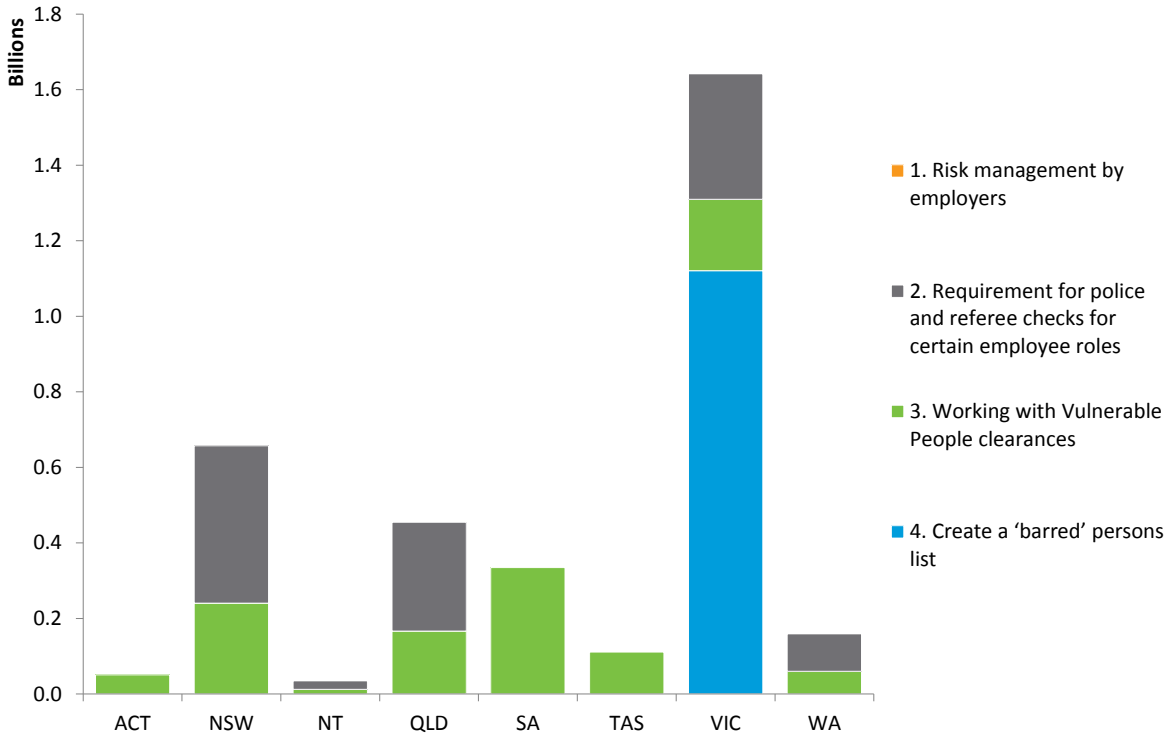
[94] Lumin Collaborative (2013), *National Disability Insurance Scheme Practical Design Fund: Potential Unintended Consequences of Self-Managed Support Packages & Appropriate Strategies and Safeguards to ensure People obtain the Full Benefit of Self-Managed Supports*, Commissioned by DFHCSIA Melbourne, Australia, p. 56.

[95] It should be noted that 31% of respondents who reported requiring criminal records did not respond to the question about whether they plan to continue current practice and 46% of respondents overall did not respond to this question.

Table 34: NPV base case for employee vetting by options and jurisdiction ($ millions)

Jurisdiction	1: Employer risk management	2: Checks for high-risk roles	3: Working with Vulnerable People clearances	4: 'Barred' persons list	Total Base Case
ACT	-	-	50.5	-	50.5
NSW	-	416.8	240.5	-	657.3
NT	-	22.7	12.1	-	34.8
QLD	-	288.2	166.6	-	454.8
SA	-	-	334.9	-	334.9
TAS	-	-	111.1	-	111.1
VIC	-	332.3	189.1	1,120.6	1,642.0
WA	-	99.2	60.0	-	159.1
Total	-	1,159.3	1,164.8	1,120.6	3,444.7

Figure 27: Breakdown of NPV for the employee vetting base case by options and jurisdiction



Assumptions

The general assumptions for the overall cost benefit analysis are set out in Section 4. In addition to these assumptions (and in particular the assumption of cost neutrality discussed in Section 4.6), it is appropriate to note three further assumptions relevant to assessing the costs and benefits of employee vetting options:

1. As this element is entirely addressed at ensuring that potential employees do not have a history of inappropriate conduct, the only benefits that accrue are those that result from avoiding SAEs. There are no benefits from improving redress should such SAEs occur.
2. As employee vetting already occurs in other industries (such as education) the infrastructure for employee vetting is in place. As a result, the primary costs of employee vetting are the labour costs of assessing applicants' criminal and other histories. These costs scale with the number of employees who deliver disability services.
3. The expansion of employee vetting will not, of itself, cause any expansion (or improvement) in existing infrastructure, and there are no material setup costs for government or providers. This issue is dealt with in more detail in Section 4.6.

5.3.2 Analysis of options

Option 1 – Employer risk management

This option gives providers the flexibility to determine their risk management processes and would allow providers to develop low cost systems. In theory, this approach would minimise the compliance costs that providers face, but it is difficult to estimate what practical difference Option 1 might make to current processes.

On the basis of providers' responses to our survey, it appears safe to assume that, in the absence of another regulatory option, many providers will continue to require potential employees to submit to a full criminal records check. It is estimated that this would involve compliance costs of approximately $21.8 million per annum for providers.

However, while providers agree that a criminal records check is the appropriate source of information upon which to base an employee vetting decision, they are likely to vary significantly in how they apply information about an applicant's criminal history when assessing that applicant's suitability for a specific position (as well as what to consider should the employee shift roles).

Option 1 therefore creates a significant risk that providers might implement inconsistent levels of employee vetting. In other words, it does not deal with the specific risks (identified earlier in this report) that government intervention is intended to guard against.[96] Providers that choose not to implement robust systems would arguably expose their participants to a significantly greater risk of relevant SAEs.[97] For these reasons, we do not see a benefit at all to participants from this option.

[96] These are the risks that employers (especially those facing acute staff shortages) might not check potential employees' previous behaviour; might employ people with inappropriate employment histories; or might not have formed a clear view about precisely when a particular person's history should prevent them from caring for vulnerable people: see Section 1.4.2.

[97] As Section 4.1 points out, elements will impact on the incidence of SAEs in different ways; some elements (and employee vetting is one) will not affect certain SAEs at all.

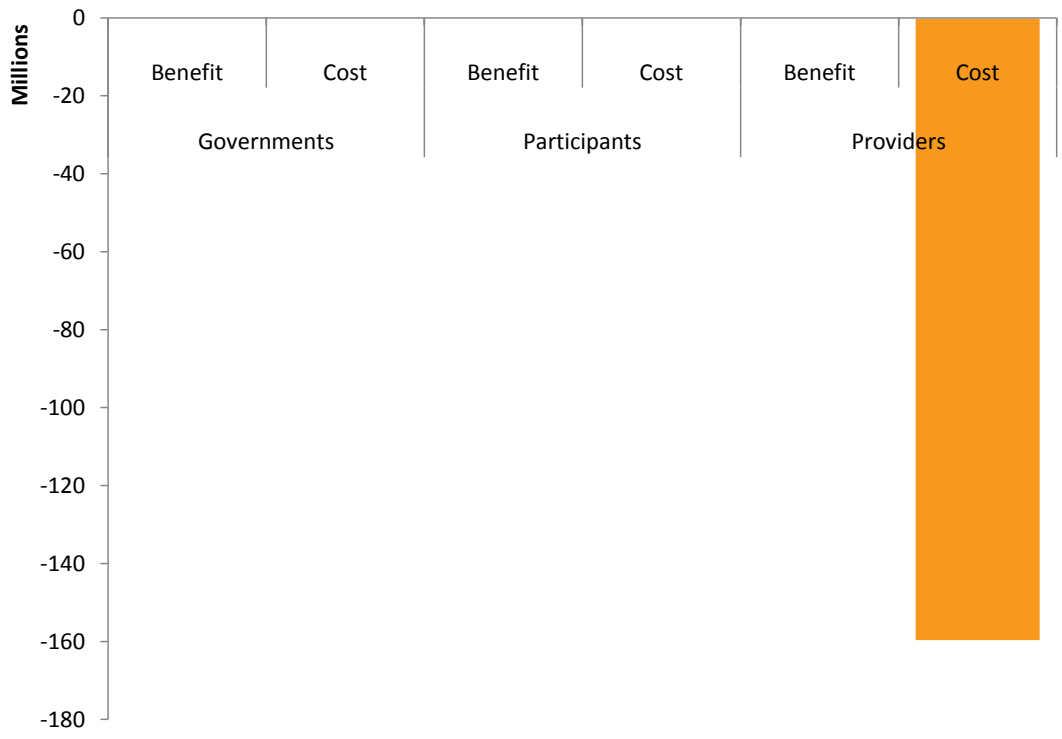
Distribution Analysis

CBA modelling reflects the finding that providers are likely to engage in criminal records checks with or without government encouragement. As such, projections for Option 1 indicate that it will deliver a negative NPV. This is primarily because Option 1 decentralises the process of deciding which employees to hire. Providers create and maintain their own individual risk management systems, which they estimate to cost an average of $3,500 per annum.

Coupled with the costs of obtaining criminal records checks and the labour costs of reviewing criminal record check responses, the overall NPV is -$159 million (see Figure 28). In comparison, other options centralise the risk management function and afford significant cost savings.

On the basis of information that Nous received from State and Territory governments, the costs to government of encouraging best practice are likely to be nominal. Information about educational campaigns in this area indicates that teams of three to five will create and refine education materials as part of their general duties for periods of up to six months, with a total average labour costs amounting to 0.75 FTE. The guidelines and educational resources that these teams produce are likely to last a number of years, so the direct cost of government labour is tiny when compared to other cost drivers.

Figure 28: distribution of costs and benefits: Option 1 of Employee Vetting



Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a negative NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenario), see Figure 29. These NPV figures can be therefore be considered robust.

Variations in the discount rate produce the largest variation (56%) in the NPV compared with the other dimensions of sensitivity (where variations are 13% for market flux to %1 for best case/worse case scenarios).

Figure 29: Sensitivity analysis: Option 1 of Employee Vetting

Regulatory Burden Analysis

Table 35 sets out the results of regulatory burden calculations and cost offsets. It indicates that the costs of compliance will amount to $21.8 million per annum. This compares to regulatory burden of $22.7 million for the base case, and would therefore amount to a full offset.

Table 35: Regulatory burden and cost offset estimate table: Option 1 of Employee Vetting

Average annual regulatory costs for Employee Vetting (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$21.8 million	nil	$21.8 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$22.7 million	nil	$22.7 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 2 – Police and referee checks for certain roles

This option would reduce risks in the highest profile areas, and hence delivers some benefits to both providers and participants, in the form of reduced SAEs. But it would not mitigate all risks. This is because, as expert advice provided to Nous suggests, many perpetrators of abuse have no recorded history of offending.

Police and referee checks would impose compliance costs on providers, which are estimated to be approximately $24 million per annum.[98] However, all jurisdictions already require police checks and therefore this option would not represent a marginal increase in compliance costs.

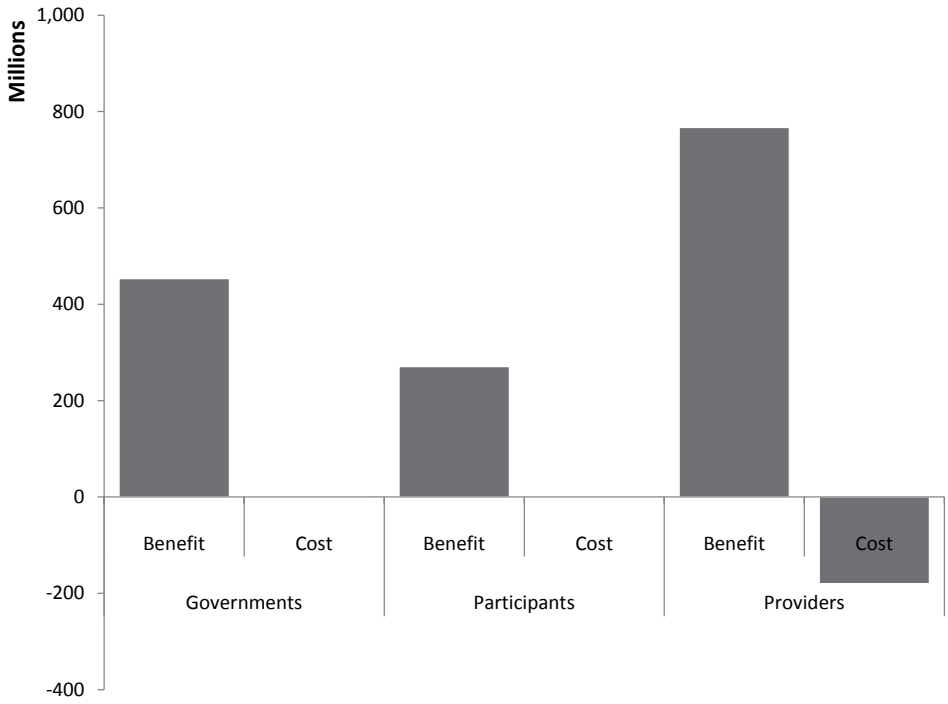
It is also appropriate to note a significant challenge to calculations associated with this option. The impact analysis assesses the effect that government intervention would have on providers' behaviour, compared with doing nothing. If 50% - 80% of providers undertake criminal records checks regardless of the regulatory regime that is in place, then it is arguable that the costs and benefits of government intervention should be reduced by 50% - 80% because those effects are not caused by a regulatory obligation. Nous does not propose to undertake this discount, primarily on the basis that it would be too difficult to determine which providers would not otherwise undertake police checks, and therefore to determine what the effects of government regulation would be.

Distribution analysis

Option 2 is calculated to deliver an overall NPV of $1.31 billion. As noted above, the CBA model assumes that governments will recoup their costs of supplying criminal records checks to employees. On this basis, the model calculates negligible costs for government and for participants. There are, however, significant benefits associated with the avoidance of assault, sexual assault and theft. These benefits amount to $270 million for participants and $453 million for government. For providers, there are significant costs associated with delay and compliance: these costs amount to $180 million. However, Option 2 more than compensates for these costs, by delivering benefits from avoided SAEs: these benefits amount to $766 million.

[98] Nous acknowledges that some providers will require potential employees to incur the cost of checks. Nous considers that this possibility is outside the terms of our analysis.

Figure 30: distribution of costs and benefits: Option 2 of employee vetting

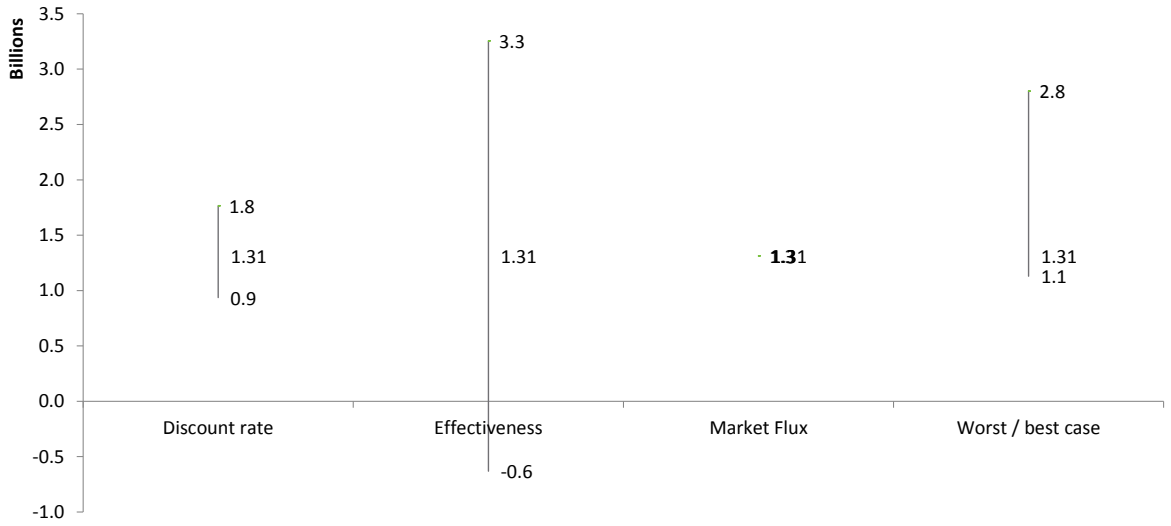


Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a positive NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenarios), see Figure 31. The NPV figures can be therefore be considered robust. Variations in effectiveness produce a much larger variation (almost 120%) in the NPV than the other dimensions of sensitivity (where variations are 21% for best case/worse case scenarios to close-to-zero for market flux.

The fact that variations in effectiveness produce such significant changes is due to the considerable monetary value that the model gives to SAEs: the comparatively low costs of compliance are easily offset by any variations in SAE incidence that Option 2 might bring about.

Figure 31: Sensitivity analysis: Option 2 of employee vetting



Regulatory Burden Analysis

Table 36 sets out the results of regulatory burden calculations and cost offsets. If governments were to replace the base case with Option 2, it would roughly offset the regulatory burden that Option 1 imposes (an average of $24.0 million p.a.) with the current regulatory burden (an average of $22.7 million).

Table 36: Regulatory burden and cost offset estimate table: Option 2 for Employee Vetting

Average annual regulatory costs for Employee Vetting (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$24.0 million	nil	$24.0 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$22.7 million	nil	$22.7 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

Option 3 – Working with Vulnerable People check

This option expands the range of information which is utilised when investigating potential employees' prior conduct. Under a WwVP check, the fields of information about the employee increase beyond criminal records, to include non-conviction information, civil cases and work history. This investigation is intended to reduce the risk of adverse events by potentially disallowing employees who do not have a criminal record but whose history suggests they might be an unacceptable risk as a potential offender.

If WwVP checks expand the range of areas subject to investigation, the process risks infringing potential employees' rights. Background checks that go beyond conviction history and work history are likely to

have minimal additional value, as they only deal with minor information of little relevance to the predatory behaviour that is the subject of the investigation.[99] To the extent that such checks extend to information on pardoned and quashed convictions, they also arguably infringe potential employees' expectations that such non-conviction information will not be used.[100] Nevertheless the balance of benefits to providers and participants, measured mainly through the avoided costs of SAEs, is significant and delivers a positive NPV.

A WwVP check will likely increase providers' compliance costs in most jurisdictions[101], as we assess that providers will be inclined to retain the current practice of requiring potential employees to undergo a criminal records check (so the new check would not supplant the current check but be added to it.) It would also likely increase providers' costs by delaying potential applicants' employment while their WwVP applications are being processed. The Productivity Commission found that:

- 87% of WwVP checks, where the applicant had no criminal history, require an average of 2 days to process
- 12% of WwVP checks, where applicants had a minor offence recorded, require an average of 5 days to process
- 1% of WwVP checks involve applicants with significant criminal history, and require an average of 28 days to process.[102]

These figures appear to conflict with the responses in the provider survey, which indicate that providers lose, on average, 3.1 potential employees every year due to lengthy delays in obtaining pre-employment screening information. Respondents estimated that their losses represent an average annual cost to the provider of $2,600.

Distribution analysis

Option 3 delivers an overall NPV across all stakeholders of $4.44 billion. As Figure 32 illustrates, this includes significant benefits for providers ($2.30 billion), for government ($1.36 billion) and for participants ($811 million).

Costs are borne by government, which maintains cost neutrality when undertaking WwVP checks for providers, but carries the cost of checks for volunteers. Providers also bear administrative and compliance costs. Information from governments indicates that the average processing time for a police check is 0.6 hours, and the average processing time for a barred person or WWVP check is one hour. Obviously, the time taken to process a WwVP check can expand significantly if an applicant calls upon government to defend a decision, but this is extremely rare. Information from the State and Territory governments indicate that this happens only a few times per year per jurisdiction. Both sets of costs are dwarfed by the scheme's capacity to reduce SAEs.

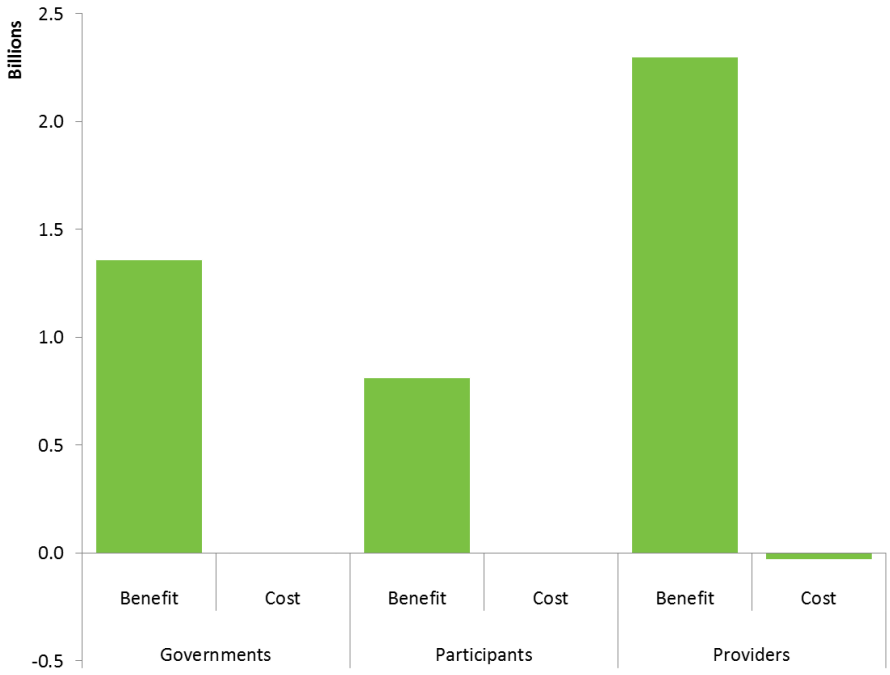
[99] See B Naylor (2012) *Living down the past: why a criminal record should not be a barrier to successful employment*, employment law bulletin, 116-117

[100] Australian Human Rights Commission (2013) *Response to Issues Paper 1 of Royal Commission into Institutional Responses to Child Sexual Abuse*, 9-10. But see Attorney-General's Department (2011), *Review of the operation of Subdivision A of Division 6 of Part VIIC of the Crimes Act 1914*. Final Report. Canberra, Australia

[101] Of note there is also a risk of heightened costs in certain communities, particularly those of Aboriginal and Torres Strait Islander background which often face additional costs and barriers to obtaining Working with Vulnerable People (or equivalent) check clearances. However analysis down to the community level is not within scope of this report.

[102] ACT DDHCS (2010), *A Working with Vulnerable People Checking System for the ACT* – Consultation Report

Figure 32: distribution of costs and benefits: Option 3 of employee vetting

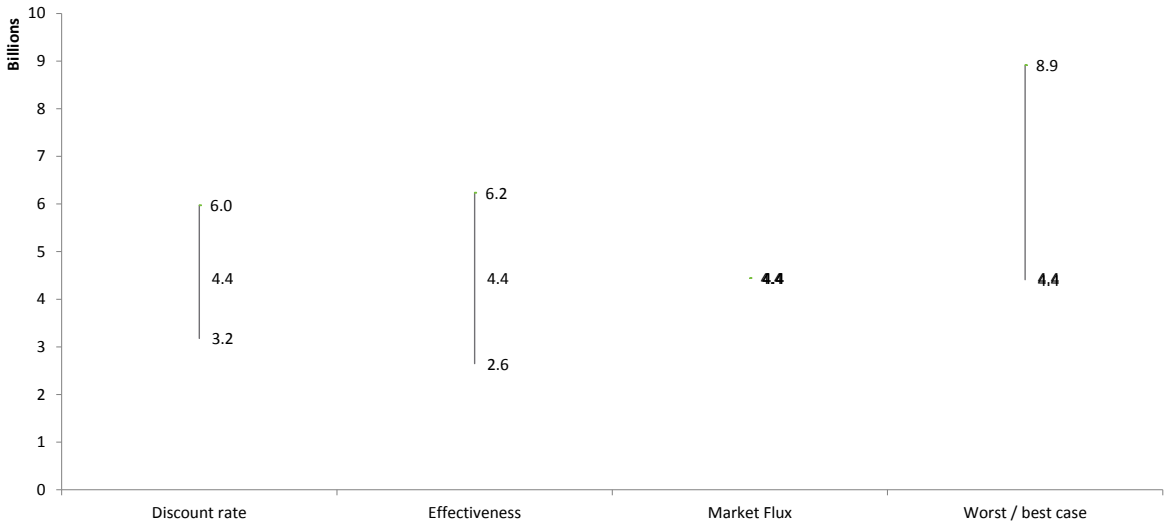


Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a positive NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenarios), see Figure 33. These NPV figures can be therefore be considered robust.

Variations in effectiveness produce a much larger variation (57%) in the NPV than the other dimensions of sensitivity (where variations are 18% for best case/worse case scenarios and negligible for market flux). As such, effectiveness is the greatest area of sensitivity.

Figure 33: Sensitivity analysis: Option 3 of employee vetting



Regulatory Burden Analysis

Table 37 sets out the results of regulatory burden calculations and cost offset. The regulatory burden associated with a comprehensive WwVP check is likely to be significantly less than the base case. The WwVP regime imposes a simple and easy to follow obligation on providers, which results in very low compliance costs.

Table 37: Regulatory burden and cost offset estimate table: Option 3 of Employee Vetting

Average annual regulatory costs for Employee Vetting (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$4.1 million	nil	$4.1 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$22.7 million	nil	$22.7 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 4 – 'Barred' person list

Following the logic that proactive employee vetting can help dissuade and weed out inappropriate employees, Option 4 also has significant potential to minimise the risk of adverse incidents. As already described, a key issue with criminal history checks is that they only identify known offenders, and many offenders do not have any previous convictions. For example, research shows that the vast majority (up to 80%) of perpetrators of sexual abuse have no known history of offending.[103] A barred person list offers greater potential to identify potential employees who do not have a criminal history but have been found (albeit not in a court of law) to have engaged in inappropriate behaviour.

Like Option 3, a barred persons list would marginally increase providers' compliance costs and delay employment of potential applicants. Option 4 requires providers to undertake two sets of tasks:

1. consult the list before they appoint any potential worker (employee or volunteer) in a role where they will undertake defined activities
2. notify the list administrator if any worker places a participant at an unacceptable risk of harm.

Responses from the provider survey in relevant jurisdictions indicate that the second task takes up significantly more time than the first. The model assumes that providers would comply with the regulation (either because legislation imposed an obligation to comply, or out of fear of becoming a target for litigation), but the average provider spends less than an hour a year notifying the list administrator of unacceptable conduct.

It should be noted that Option 4 has a significant potential to infringe workers' rights. Like Option 3, a barred persons list may identify a worker as being barred – if the worker's employers decided that the

[103] Queensland Child Protection Commission of Inquiry (2013), *Child Protection Commission of Inquiry: Report.*

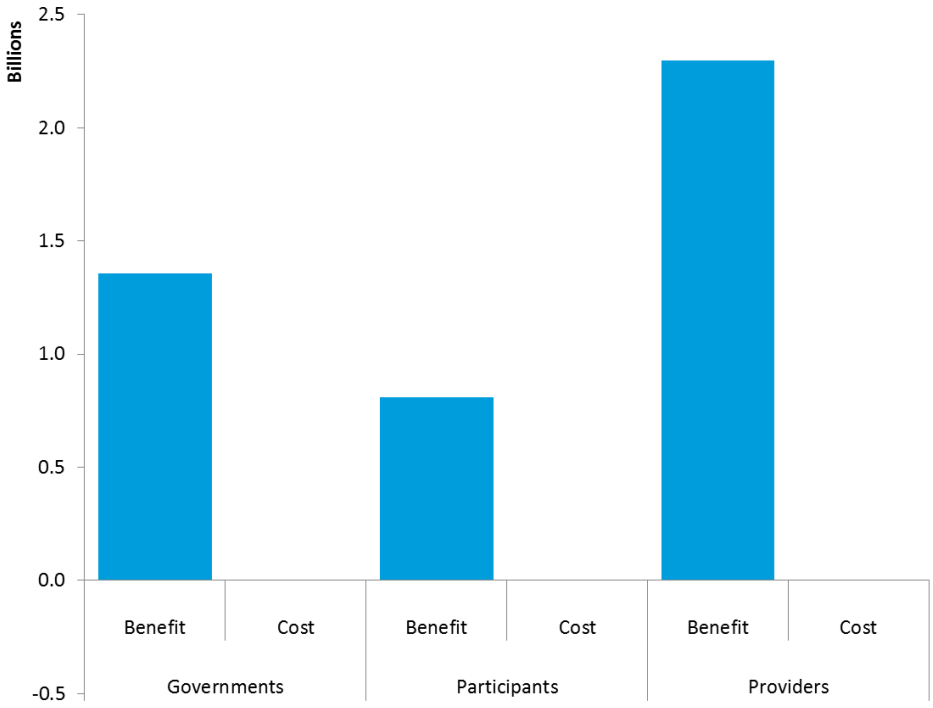
worker had engaged in misconduct – without necessarily having been convicted of any crime (or provided with any procedural fairness).

Distribution analysis

The projected NPV of Option 4 is $4.47 billion. This result is similar to the NPV for Option 3. The benefits projected for Option 3 and Option 4 are more or less equivalent, as the model assumes similar reductions in SAEs for WWVP checks and a barred persons lists.

The costs to government are smaller for Option 4 than Option 3, as the costs of setting up and maintaining the scheme are very small. The main overall costs are borne by providers when checking entries, but the information from the provider survey indicates that this takes only a short amount of time per entry. As a result, the costs are insignificant in comparison to benefits.

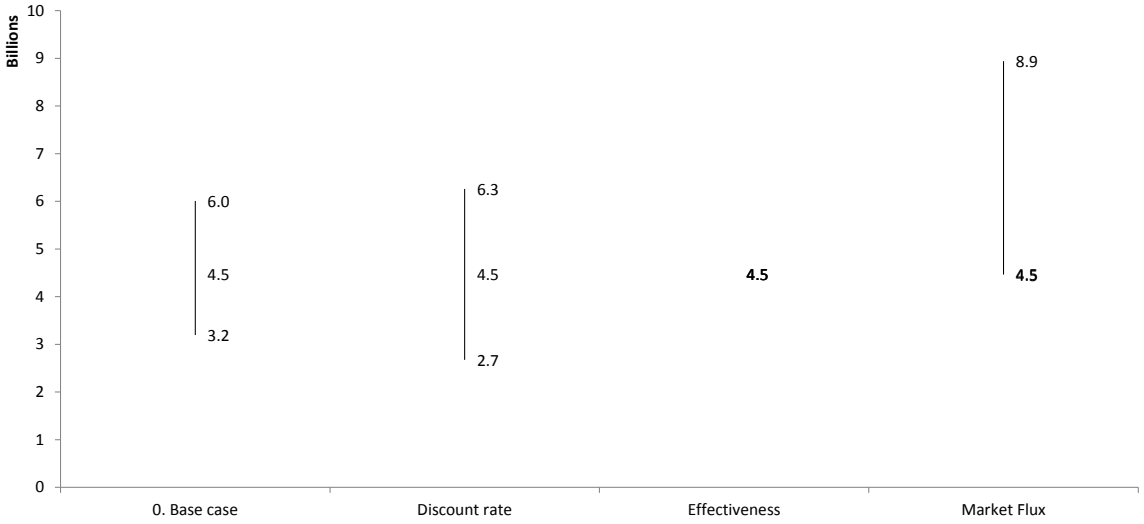
Figure 34: distribution of costs and benefits: Option 4 of employee vetting



Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a positive NPV across all the dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenarios), see Figure 35. These NPV figures can therefore be considered robust.

Figure 35: Sensitivity analysis: Option 4 of employee vetting



Regulatory Burden Analysis

Table 38 sets out the results of regulatory burden calculations and cost offset. It indicates that the regulatory burden of Option 4 is minimal, and would be more than offset by reductions in the regulatory burden that the base case produces.

Table 38: Regulatory burden and cost offset estimate table: Option 4 of Employee Vetting

Average annual regulatory costs for Employee Vetting (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$90,000	nil	$90,000
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$22.7 million	$	$22.7 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

5.3.3 Maximising Net Present Value

Projections from the model indicate that a combination of Option 3 and Option 4 would maximise overall benefits, producing a total NPV of $8.9 billion.[104] The NPVs of Option 1 and Option 2 are

[104] Note, however, that if Option 3 includes mandatory employer reporting (as some commentators have proposed) then Option 4 would be redundant.

considerably lower as they create higher costs for providers (waiting for police checks and maintaining risk management framework) and lower benefits through avoidance of adverse incidents.

Providers incur the highest costs under Option 2 because they bear the primary responsibility of obtaining criminal records clearances, and because they must wait for employees' police check to be processed.

Option 1 presents the next highest costs for providers from maintaining a risk management framework (including any one off set up costs). Option 3 and Option 4 also have compulsory reporting obligations on providers, as well as imposing additional costs associated with substituting or supervising who have not received clearance to commence employment.

Table 39: Distribution of NPV per element, by stakeholder group ($million)

		0: Base case	1: Employer risk management	2: Checks for high-risk roles	3: Working with Vulnerable People clearances	4: 'Barred' persons list	Option 3 and Option 4
Governments	Benefit	1,096.3	0.0	453.3	1,360.0	1,360.0	2,720.0
	Cost	1.4	0.0	0.1	0.1	3.3	3.5
	Net	1,094.8	0.0	453.2	1,359.9	1,356.6	2,716.5
Providers	Benefit	1,862.9	0.0	766.9	2,300.6	2,300.6	4,601.1
	Cost	170.0	159.8	180.1	31.0	0.7	31.6
	Net	1,692.9	-159.8	586.7	2,269.6	2,299.9	4,569.5
Participants	Benefit	656.9	0.0	270.4	811.3	811.3	1,622.5
	Net	656.9	0.0	270.4	811.3	811.3	1,622.5
Total		3,444.7	-159.8	1,310.4	4,440.7	4,467.8	8,908.5

5.3.4 Competition analysis

The employee vetting element has minimal expected impact on competition. The most significant impact would be the additional cost imposed on providers. However, in many jurisdictions providers are already incurring these costs (though this has not been driven by a desire to achieve a competitive advantage).

The key comparative findings are outlined below. Table 40 provides a summary of the analysis across each option.

Table 40: Competition analysis – employee vetting

Key LOE	Topic	Questions	Option 1	Option 2	Option 3	Option 4
1. Does the option	**Market entry**	Does the option impose regulatory barriers to market entry?	○	◔	◔	◔

Key LOE	Topic	Questions	Option 1	Option 2	Option 3	Option 4
impact on business market entry and operations?		Does the option increase costs to market entry?	○	◔	◑	◔
	Provider operations	Does the option limit the ability of some types of providers to provide some services?	○	◔	◔	◔
2. Does the option restrict the competition process?	**Customer access to services**	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?	○	○	○	○
		Does the option reduce providers' ability to adapt / innovate their service offer?	○	○	○	○
	Market information	Does the option limit providers' freedom to advertise or market their offer?	○	○	○	○
		Does the option limit providers' ability to set independent prices?	○	○	○	○
		Does the option limit the information available to consumers?	○	○	○	○
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?	○	○	○	○
3. Does the option generate a net social benefit?			Low	Low	Med-High	Med-High

Key – Impact on competition

○ No impact ◔ Minimal impact ◑ Moderate impact ◕ Signficant impact ● Extreme impact

Market entry

The voluntary system proposed in Option 1 does not create any regulatory barriers to entry. Options 2-4 gradually increase the required recruitment practices and employee checks that providers must demonstrate to enter and operate within the market. Cost increases reflect the number of checks required.

If options 2 or 3 were implemented, some providers would cover the compliance costs for these checks, whereas others might pass the cost onto prospective employees. However, this difference relates to the way in which providers choose to run their business, and (given that the regime would apply to all providers) there is likely to be no inherent impact on competition.

Option 4 will introduce the greatest additional cost for providers, as they will need to invest the time and resources to consult the barred persons list prior to any appointment of an employee or volunteer.

Provider operations

Each regulatory option will impact on all providers equally. However, compliance is expected to have a greater impact on smaller providers that have less well-established processes for obtaining employee checks and clearances. Larger providers often have specific arrangements with the police and can obtain criminal record checks more quickly.

The impact on competition of these options is likely to be higher for providers in regional and remote locations for whom it may take longer to process employee checks, and who therefore may be affected by delays in employment. In addition, larger providers are able to negotiate arrangements for criminal record checks that shorten the delay between filing an application for a check and receiving the result the potential employee's criminal history.[105] This reduces the delays in taking on new employees and therefore constitutes a competitive advantage.

Competition process

This element does not limit providers' ability to innovate or adapt their service offers. No option reduces providers' freedom to advertise or set independent prices. Similarly, implementation of any option does neither restrict the information available to participants, nor impact customer choice or ability to switch providers.

Social benefit

The competition effects associated with each of the four options are minimal, and have no material impact on the assessment of net benefits outlined above.

[105] Source: National Disability Services

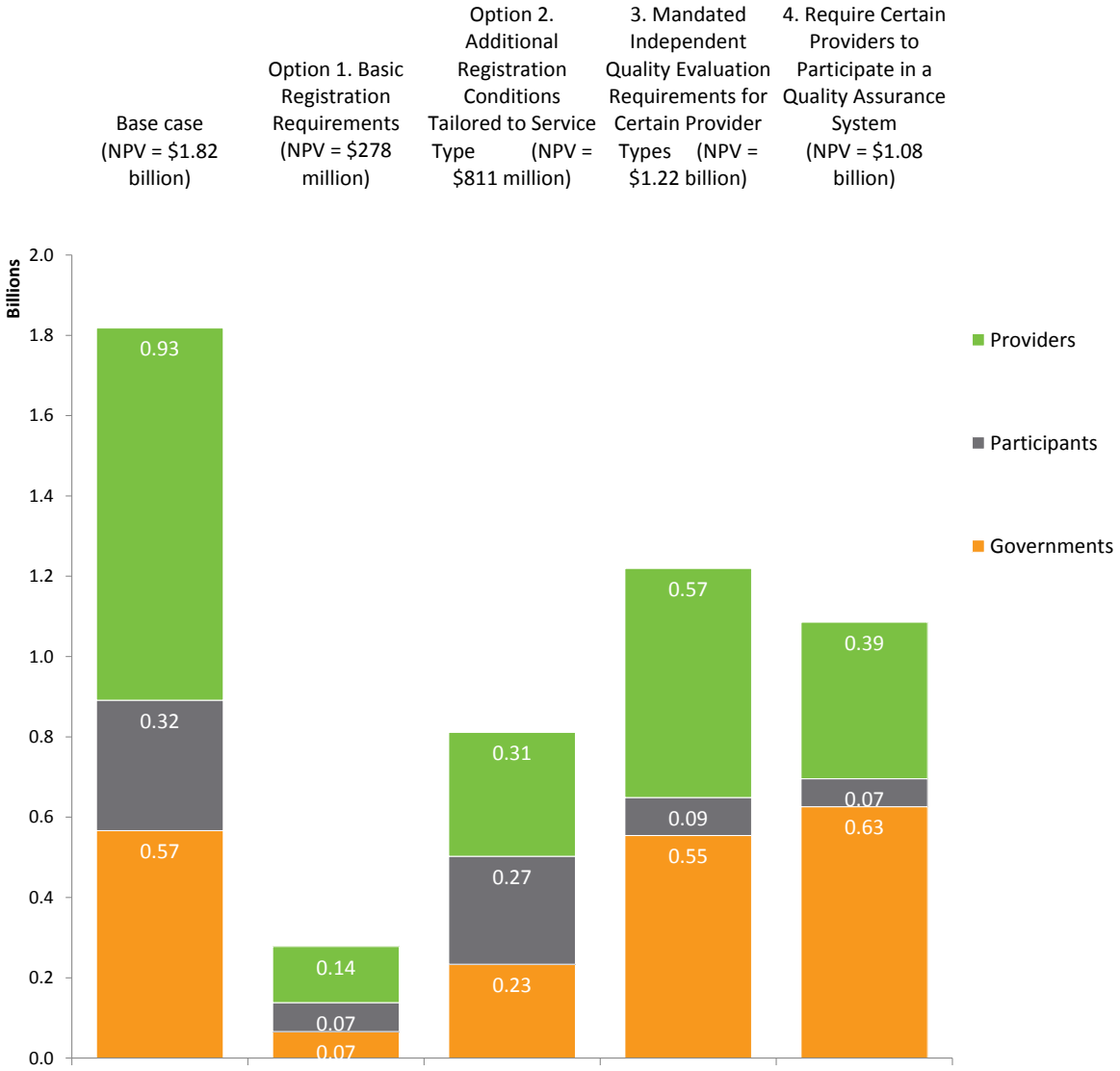
5.4 Provider registration

Summary

Providers incur costs to comply with requirements that give them a license to operate, and those costs increase according to the degree of coverage (i.e. whether different rules apply to certain service providers) or the amount of time and resources required to achieve and maintain a certain standard. The model accounts for these costs as well as those associated with a provider's failed attempt to comply and to be registered.

These costs are heavily outweighed, however, by the benefits that accrue to providers from reduction in SAEs (and the need to provide redress).

Figure 36: Summary of NPV for provider registration element



5.4.1 Background

The introduction of the NDIS will likely see new providers entering the disability services market, in addition to participants purchasing a broad range of existing services. In this context, a system of provider registration will be necessary that balances the risks of low quality services with the compliance costs that providers incur.

Currently, provider registration is limited to the terms and conditions of the contractual agreements between government agencies that provide funding and disability services that receive funding. This has resulted in criticisms that provider registration has involved a 'tick the box' approach rather than ensuring clear and effective rights-based disability standards.[106] More comprehensive provider registration is expected to reduce the risk of adverse incidents and enable improvements in the quality of services. National consistency across provider types will also make it easier for participants to switch providers across jurisdictions.

The regulatory burden and associated impact on competition for providers delivering high risk supports is significant. However, it may be appropriate that providers delivering supports that involve a potential high risk of harm are subject to a more rigorous assessment of safety and competency. Results from the regulator's accreditation, audit and evaluation process that are typically part of a registration scheme can also be expected to promote improvements in the quality of services. This also has the effect of stimulating competition.

Assumptions

Calculations of costs and benefits for the provider registration options encompass upfront registration requirements, as well as (for Option 3 and Option 4) ongoing compliance against an agreed set of standards. The general assumptions underpinning the CBA calculations are set out in Section 4. In addition to these assumptions (and in particular the assumption of cost neutrality discussed in Section 4.6), there are a number other matters to note:

- The Consultation RIS states that some proportion of higher-risk providers will be selected to undergo the additional registration requirements set out in Option 2, Option 3 and Option 4. The CBA calculations assume that this proportion is 40% of all providers for Option 2, and 20% of all providers for Option 3 and Option 4.
- The model assumes that a small proportion of providers (1% to 5%) will be unable to compete profitably due to the additional compliance costs that Option 3 and Option 4 impose. As the discussion of Option 4 below indicates (see page 110), these costs can be significant and can amount to an extra 1.0 FTE of labour. Similarly, stringent registration requirements reduce providers' willingness to enter the market, and participants' ability to locate a provider is diminished.
- As a result, a subset of participants will be unable to access adequate care, particularly in thin markets. The model considers two aspects of this effect. First, government accrues 'benefits' (which in this case are avoided costs) from not having to pay for participants' care. Second, participants lose the opportunity to obtain (adequate) care. The model attributes a higher cost to the participants from missing out on care than the direct 'benefit' (avoided costs) for governments, so this situation returns a net overall cost.

[106] Jade McEwen, Christine Bigby & Jacinta Douglas (2014) What are Victoria's Disability Service Standards Really Measuring?, Research Practice in Intellectual and Developmental Disabilities, 1:2, 148-159, Lumin Collaborative (2013), *National Disability Insurance Scheme Practical Design Fund: Potential Unintended Consequences of Self-Managed Support Packages & Appropriate Strategies and Safeguards to ensure People obtain the Full Benefit of Self-Managed Supports*, Commissioned by DFHCSIA Melbourne, Australia, p. 93.

Base case

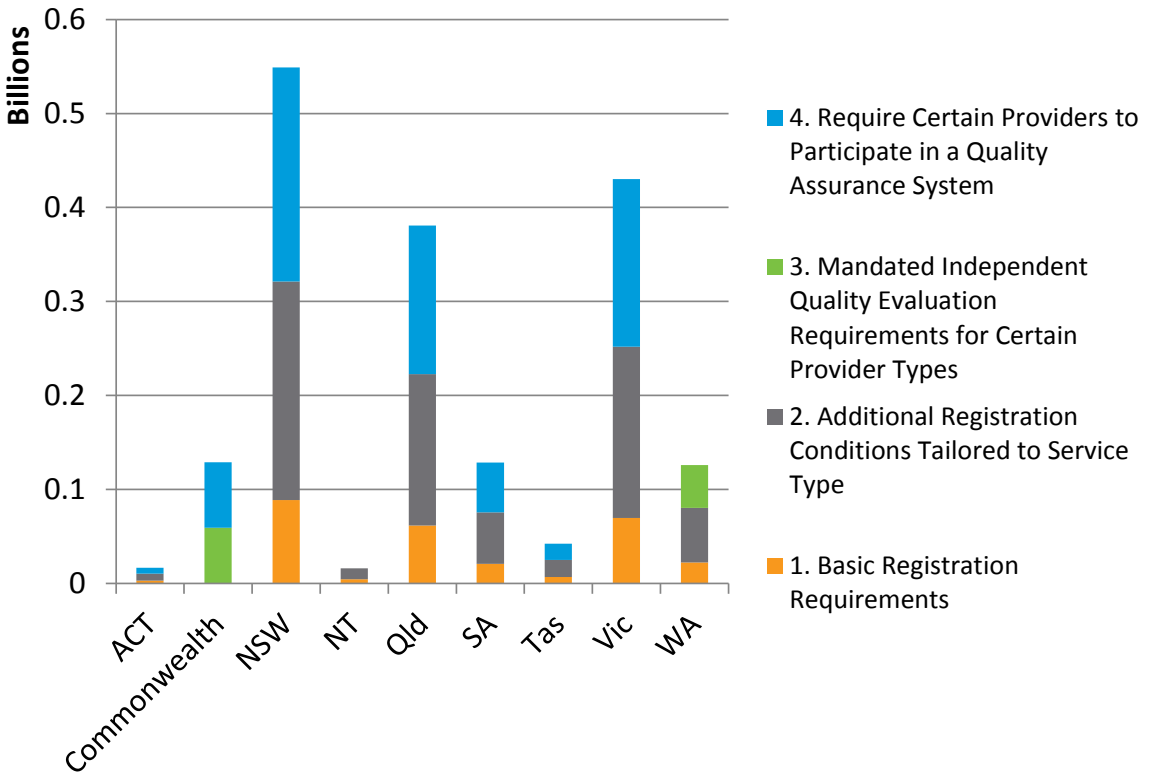
Modelling indicates that the base case has a total NPV of $1.82 billion (see Table 41). The majority of that value is generated by Option 2 ($725 million), which has been deployed in all jurisdictions and for all participants, and Option 4 ($711 million) which has not been deployed universally but which yields a large NPV.

These options would generate more value per participant than Option 1, but are only applied to services delivered to more vulnerable participants.

Table 41: NPV base case for provider registration by options and jurisdiction ($ millions)

Jurisdiction	1: Basic registration requirements	2: Additional registration conditions	3: Mandated independent quality evaluation for certain providers	4: Mandated quality assurance system for certain providers	Total Base Case
ACT	$2.86	$7.39	-	$6.45	$16.70
Cwlth			$59.15	$69.76	$128.9
NSW	$88.70	$232.50	-	$227.76	$548.99
NT	$4.41	$11.55	-	-	$15.96
QLD	$61.51	$161.26	-	$158.15	$380.92
SA	$20.83	$54.57	-	$53.27	$128.67
TAS	$6.87	$17.98	-	$17.37	$42.22
VIC	$69.56	$182.30	-	$178.28	$430.14
WA	$22.14	$58.01	$45.61	-	$125.76
Total	**$276.87**	**$725.57**	**$104.76**	**$711.07**	**$1,818.27**

Figure 37: Breakdown of NPV for the provider registration base case by options and jurisdiction



5.4.2 Analysis of options

Option 1 – Basic registration requirements

This option would significantly reduce providers' compliance costs in all jurisdictions. Currently, all jurisdictions require providers to undertake a more comprehensive registration process than this option envisions, but expert advice suggests that reducing the registration requirements would allow providers to operate without reference to any code of conduct. Option 1 is likely therefore to significantly increase the risk of adverse incidents.

Distribution Analysis

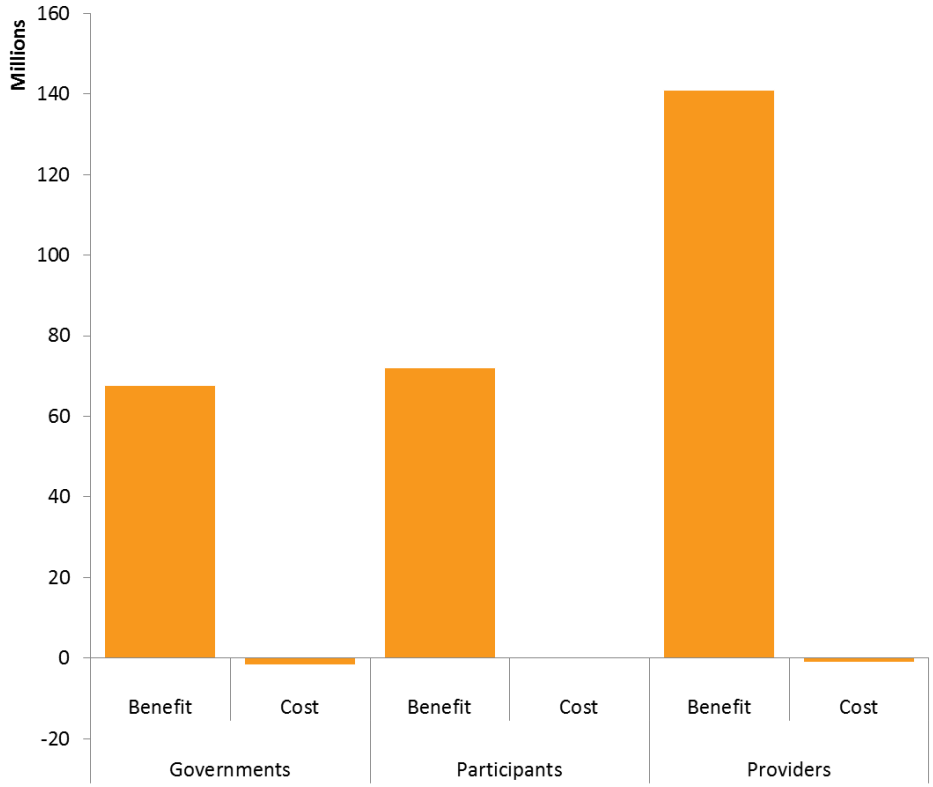
Modelling indicates that Option 1 delivers a NPV of $278 million. These benefits flow entirely from minor changes in the incidence of SAEs. Figure 38 sets out the distribution analysis for Option 1.

The cost to government under provider registration accumulates between Option 1 and Option 3. Option 1 imposes costs of reviewing basic registration requirements, while Option 2 adds the costs of reviewing the additional registration requirements. Option 3 and Option 4 impose roughly the same options on government. Although the models assume that governments adopt cost-neutrality policies to distribute the direct costs of quality evaluation and quality assurance audits, governments will still incur costs in reviewing these results of those audits, and acting on the audits where appropriate.

Providers incur costs from complying with each option's requirements. The options require progressively more of providers' labour and costs.

As noted above, participants incur costs from being unable to find an adequate provider, due to more stringent registration requirements. For Option 1 and Option 2, these costs are negligible, but the additional audit costs that Option 3 and Option 4 impose translate into significant costs for participants.

Figure 38: distribution of costs and benefits: Option 1 of provider registration



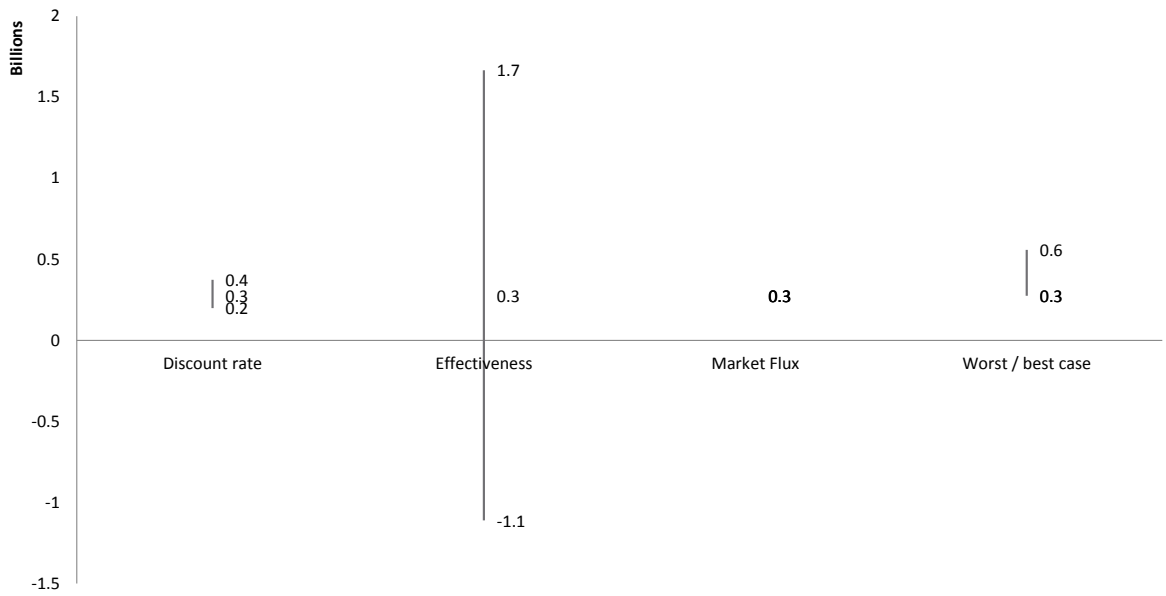
Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a positive NPV across three dimensions of sensitivity (discount rate, market flux and worst/best case scenarios), see Figure 39.

Sensitivity analysis associated with changes in effectiveness has significant variations on whether the CBA returns a positive or a negative NPV. This is because the effectiveness sensitivity analysis varies the effectiveness of SAE incidence by ±5%, far more than the reduction that Option 1 is projected to cause.

A variation of ±5% in SAE incidence is highly unlikely to result from the process of filling out forms, so it is appropriate to discount this specific sensitivity analysis. These NPV figures can be therefore be considered comparatively robust.

Figure 39: Sensitivity analysis: Option 1 of provider registration



Regulatory Burden Analysis

Table 42 indicates that the regulatory burden for Option 1 is very low. This estimate is associated with the time taken to complete simple registration papers, without the additional preparation of quality control documents that Option 2 contemplates. The estimate also assumes no charges associated with provider registration. Should governments replace the base case regulatory regime with Option 1, the reduction in regulatory burden would more than offset any compliance costs that Option 1 might impose.

Table 42: Regulatory burden and cost offset estimate table: Option 1 of Provider Registration

Average annual regulatory costs for Provider Registration (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$140,000	nil	$140,000
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$4.3 million	$	$4.3 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

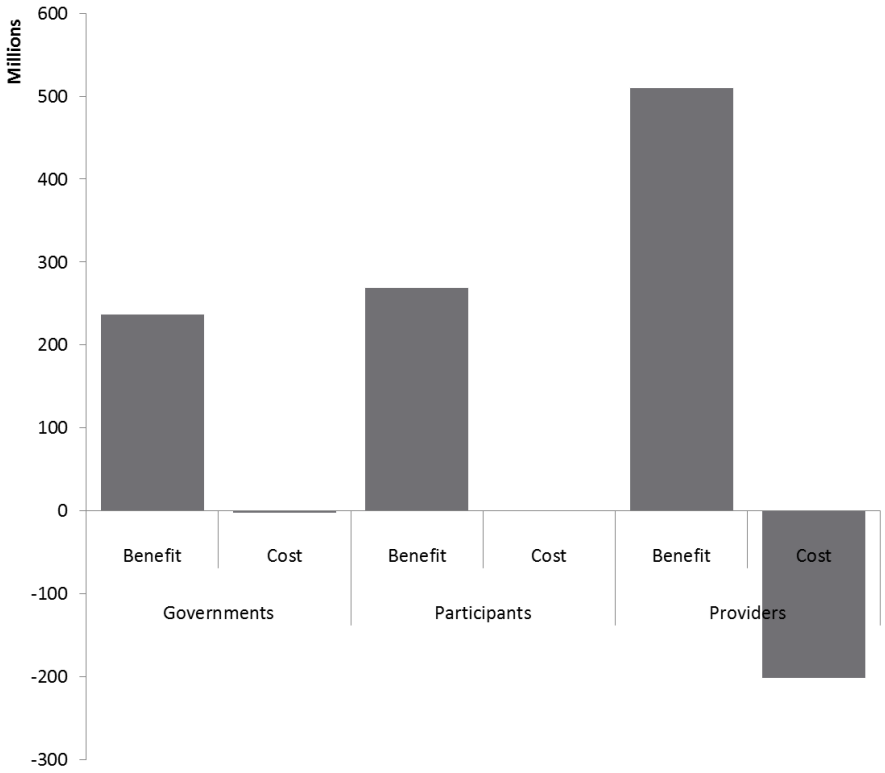
Option 2 – Additional registration conditions

Option 2 is an extension of the scope of Option 1, to impose additional conditions that would require the provider to demonstrate appropriate systems. This might include "a requirement to demonstrate that a provider uses safe practices when recruiting staff, tell the NDIA or notify the police if there is a serious incident, and have a complaints-handling system and a system of privacy protection in place."[107] The conditions required under Option 2 "would vary according to the potential risk related to the types of supports the provider offers."[108] The model assumes that these extra conditions would apply to 40% of all providers.

Distribution Analysis

Option 2 delivers an overall NPV across all stakeholders of **$811 million**. Costs for government roughly double when compared to Option 1: although only 40% of providers must submit extra information, the model assumes that government will seek much greater detail than it seeks in Option 1. Costs for providers increase significantly as well, due to the need to create relevant risk management procedures. However, as a result of greater scrutiny and a focus on higher areas of risk, the value of benefits that each stakeholder group receives triples between Option 1 and Option 2.

Figure 40: distribution of costs and benefits: Option 2 of provider registration



Sensitivity Analysis

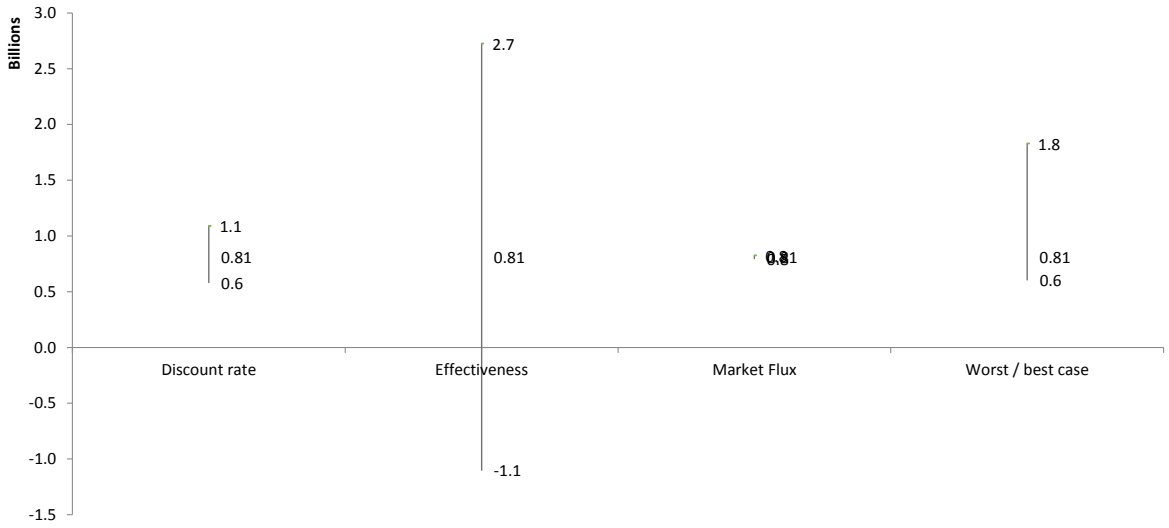
Sensitivity analysis indicates that this option maintains a positive NPV across three dimensions of sensitivity (discount rate, market flux and worst/best case scenarios), see Figure 41. Again, the sensitivity

[107] Consultation RIS, p. 34
[108] Consultation RIS, p. 35

analysis associated with changes in effectiveness has significant variations on whether the CBA returns a positive or a negative NPV.

As with Option 1, the effectiveness sensitivity analysis varies the effectiveness of SAE incidence by ±5%, far more than the reduction that Option 1 is projected to cause. These NPV figures can be therefore be considered comparatively robust.

Figure 41: Sensitivity analysis: Option 2 of provider registration



Regulatory Burden Analysis

Table 43 illustrates the similarity in value between the overall regulatory burden of Option 2 and the regulatory burden of the base case.

Table 43: Regulatory burden and cost offset estimate table: Option 2 of Provider Registration

Average annual regulatory costs for Provider Registration (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$27.4 million	nil	$27.4 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$4.3 million	$	$4.3 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

Option 3 – Mandated independent quality evaluation for certain providers

Option 3 is likely to produce significant benefits by assessing the quality of providers' services through engagement with participants. Expert advice suggests that a focus on participants' experience will

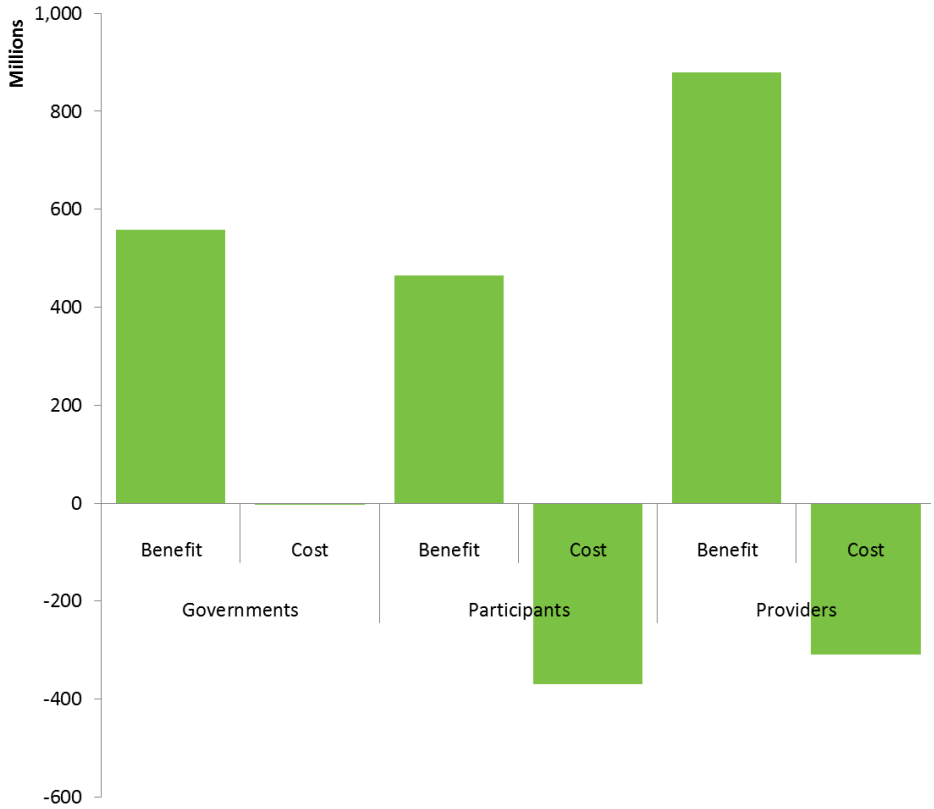
promote accountability and a client-centred approach, similar to the process described for complaints (see Section 1.4.1). High quality services, with robust procedures and processes, are less likely to produce adverse incidents.

Option 3 and Option 4 deliver high NPVs. They achieve higher reductions in adverse incidents, which compensate for the higher costs that they impose. Option 3 and Option 4 also generate costs for some participants in rural and remote locations, who may be unable to find providers due to more stringent standards.

Distribution Analysis

Option 3 delivers an NPV of $1.22 billion. Providers incur costs amounting to $310 million, which results from compliance costs, costs of responding to (an increased volume of reported) SAEs, and costs of making redress for SAEs. Participants also incur costs in Option 3, as more-stringent registration requirements reduce providers' willingness to enter the market, and participants' ability to locate a provider is diminished. Given the extra value associated with a failure to obtain services, these costs exceed $445 million.

Figure 42: distribution of costs and benefits: Option 3 of provider registration



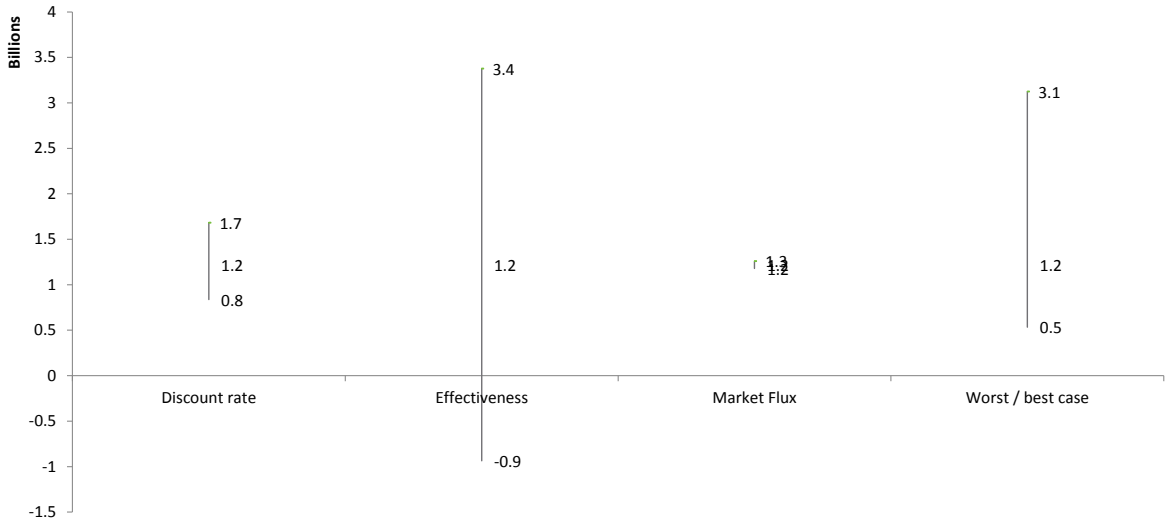
Sensitivity Analysis

Sensitivity analysis indicates that this option maintains a positive NPV across three dimensions of sensitivity (discount rate, market flux and worst/best case scenarios), see Figure 43. Again, sensitivity analysis associated with changes in effectiveness has significant variations on whether the CBA returns a positive or a negative NPV.

Unlike Option 1 and Option 2, however, Option 3's effectiveness on SAE incidence should balance the variations associated with SAE. The effectiveness analysis produces a negative NPV because of the costs that this option imposes on providers and participants; due to these significant costs Option 3 could produce meaningful reductions in SAE but would return a negative NPV in the less effective scenario.

Option 3 must therefore be clearly effective before COAG can have confidence that its benefits outweigh its costs.

Figure 43: Sensitivity analysis: Option 3 of provider registration



Regulatory Burden Analysis

Table 44 sets out the regulatory burden analysis for Option 3. It acknowledges a significant difference between the regulatory burden that Option 3 imposes ($41.89 million per annum), and the regulatory burden that the base case imposes ($4.25 million per annum).

Table 44: Regulatory burden and cost offset estimate table: Option 3 of Provider Registration

Average annual regulatory costs for Provider Registration (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$41.9 million	nil	$41.9 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$4.3 million	$	$4.3 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

Option 4 – Mandated participation in external quality assurance system for certain providers

This option involves a broader evaluation than that envisioned in Option 3, and one which focuses on governance and operational systems as well as participant's experiences. This broader review would

facilitate further improvements in the quality of services, particularly in organisational practices and systems. Option 4 would reduce the current risk of adverse incidents because the quality assurance system would involve more comprehensive reviews than currently occur in most jurisdictions. However, it is likely that this option would involve increased costs for providers to participate in the quality assurance review and to maintain compliance with the standards.

In the provider survey, respondents were generally quite positive about the benefits of quality assurance frameworks. Table 45 sets out providers' responses to questions about whether quality assurance frameworks are helpful: it shows that very few providers were negative about quality assurance frameworks; most providers were positive.

Table 45: Provider views about whether quality assurance frameworks are helpful

Row Labels	Count
Neither helpful nor unhelpful	2
Not at all helpful	1
Not very helpful	2
Somewhat helpful	24
Very helpful	28
(blank)	15
Grand Total	**72**

A single quality assurance framework is also likely to reduce providers' costs, by minimising the need to comply with multiple frameworks. Of the 64 providers who responded to questions about how many quality assurance frameworks the providers complied with, just under half indicated that they complied with three or more frameworks (see Table 46).

Interestingly, even these providers were very positive about the value that quality assurance frameworks deliver: eighty per cent of those providers complying with three of more frameworks indicated that quality assurance frameworks were 'very helpful'.

Table 46: Number of quality assurance frameworks that providers comply with

Number of quality assurance frameworks	Number responding	Proportion
1	16	25.00%
2	18	28.13%
3	20	31.25%
4	5	7.81%
5 or more	5	7.81%

The costs of complying with quality assurance frameworks are significant, and involve external costs (fees paid to auditors, trainers and other professional services) as well as workforce time spent preparing for, and conducting, evaluations (see Table 47 and Table 48). Through the provider survey, Nous found that the existing quality evaluation systems cost providers an average of:

- $5,025 per annum in record-keeping fees
- $2,590 per annum in training (specifically for the evaluation or issues raised in the evaluation)
- $5,287 in other professional services
- $950.80 per annum to prepare for the evaluation (although the larger providers' estimates of this figure are more than ten times higher).
- $10,000 per annum for auditors' fees.

This amounts to approximately $20,000 per annum to undertake evaluations for the purposes of maintaining quality assurance.

Table 47: Costs for maintaining quality assurance frameworks

	Audit costs (optional)	Records	Training	Professional services
No cost		33%	44%	39%
$1 – $500		5%	7%	-
$500 – $999		6%	6%	6%
$1,000 – $2,999		9%	7%	8%
$3,000 – $4,999	20%	13%	16%	9%
$5,000 – $9,999	20%	13%	10%	14%
$10,000 or more	60%	22%	9%	24%

Table 48: Labour costs to prepare for and conduct quality assurance evaluations

	Prepare for evaluation		Conduct evaluation	
	Managers	Front-line staff	Managers	Front-line staff
Fewer than 100 hours	4%	21%	30%	43%
100 – 199 hours	15%	13%	20%	18%
200 – 549 hours (equivalent to 0.1 – 0.3 FTE)	22%	23%	14%	14%
550 – 949 hours (equivalent to 0.3 – 0.5 FTE)	26%	16%	13%	14%
950 – 1,988 hours (equivalent to 0.5 – 1 FTE)	20%	9%	11%	2%
1,900 – 2,799 hours (equivalent to 1 – 1.5 FTE)	13%	9%	4%	2%

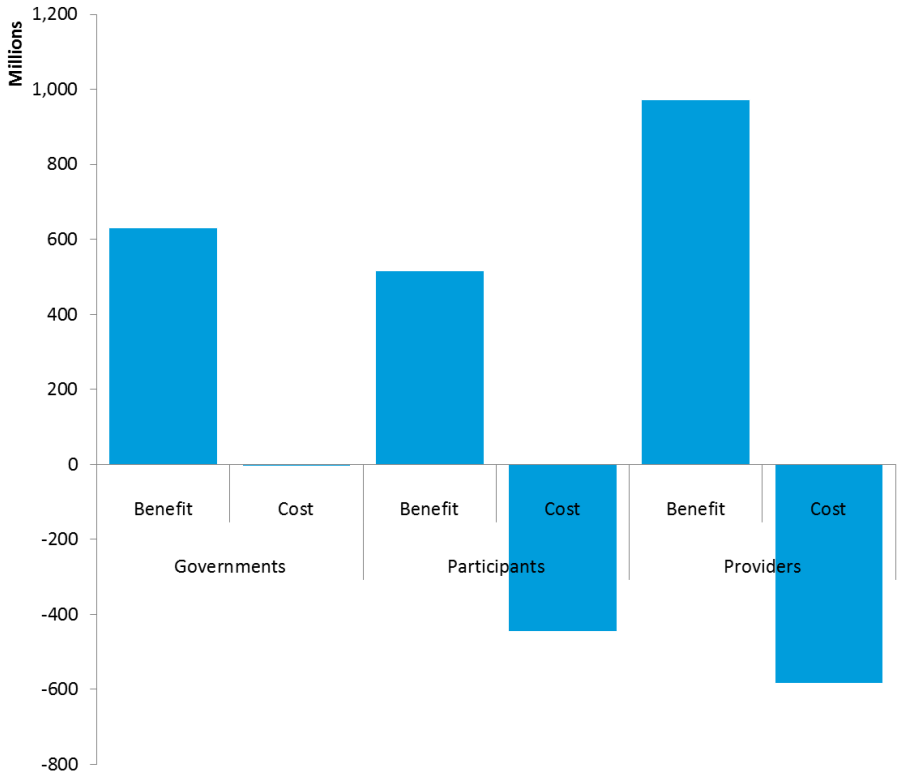
	Prepare for evaluation		Conduct evaluation	
More than 2,800 hours (more than 1.5 FTE)	22%	9%	9%	7%

Distribution Analysis

Option 4 delivers a NPV of **$1,080 million.** Figure 44 sets out the distribution of costs and benefits by stakeholder group. Given the costs outlined above, it is perhaps unsurprising that providers' costs under Option 4 amount to $583 million,[109] while the costs to participants are $445 million[110].

However, Option 4 delivers benefits for governments ($631 million), for participants ($515 million) and for providers ($972 million).

Figure 44: Distribution of costs and benefits: Option 4 of provider registration



Sensitivity Analysis

Sensitivity analysis for Option 4 is consistent with the pattern of sensitivity across the rest of the provider registration element. NPV remains positive across three dimensions of sensitivity (discount

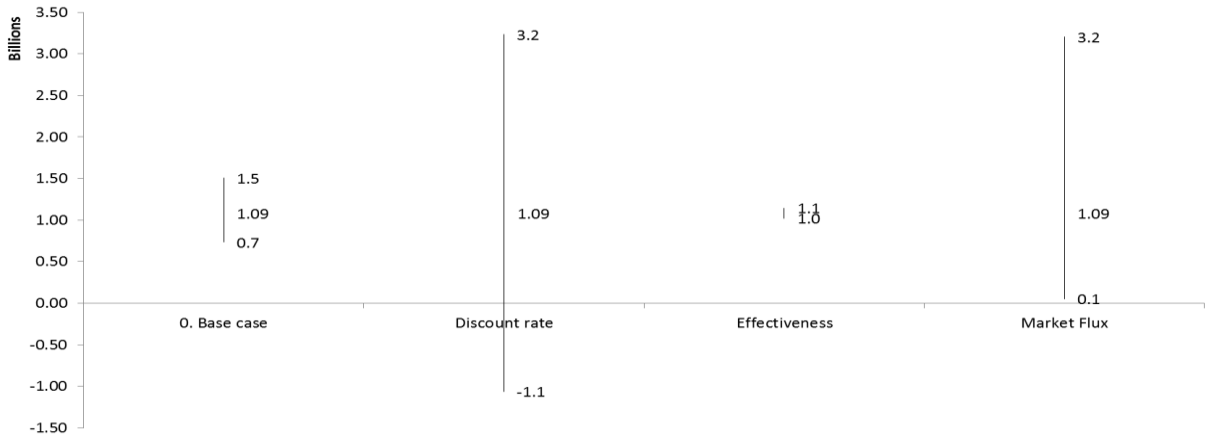
[109] We discount some, but not all, of providers' costs on the ground that many providers already voluntarily comply with own quality assurance framework. We also assume that Option 4 imposes slightly more regular audits than appear to be required in many jurisdictions.

[110] Note that it is possible that government could incur costs under this option via the contribution to the cost of registration via one-off grants, but this has not been included in the analysis as it is considered highly discretionary

rate, market flux and worst/best case scenarios.) See Figure 43, But it can be negative depending on how effective it is in preventing SAEs.

As with Option 3, the Option 4's costs make effectiveness an important issue in determining whether Option 4 generates a positive or negative NPV.

Figure 45: Sensitivity analysis: Option 4 of provider registration



Regulatory Burden Analysis

Table 38 sets out the results of regulatory burden calculations. It indicates that the regulatory burden associated with Option 4 ($78.91 million) is significantly more than the regulatory burden of the base case ($4.25 million). This change is mainly associated with a shift in the classification of providers' costs, rather than an increase in costs themselves.

Option 4 incorporates quality assurance audits into formal regulation, so the costs that providers previously and voluntarily incurred in complying with those audits are now classified as regulatory burden.

Table 49: Regulatory burden and cost offset estimate table: Option 4 of Provider Registration

Average annual regulatory costs for Provider Registration (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$78.9 million	nil	$78.9 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$4.3 million	$	$4.3 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

Total (Change in costs – Cost offset) ($ million) = $

5.4.3 Maximising the Net Present Value

Governments could choose to deploy Option 3 and Option 4 at the same time. The combination of option 3 and option 4 across the whole of Australia yields a total NPV of $2.3 billion.

This compares well with the base case NPV of $1.82 billion. Most jurisdictions do not use of Option 3, so most of the difference between a combination of Option 3 and 4, and the base case, arises due to the additional benefits that Option 3 causes.

Table 50: Distribution of NPV per element, by stakeholder group ($million)

		1: Basic registration requirements	2: Additional registration conditions	3: Mandated independent quality evaluation for certain providers	4: Mandated quality assurance system for certain providers	Options 3 and 4
Governments	Benefit	$67.58	$236.87	$558.44	$631.21	$1189.65
	Cost	$1.59	$3.26	$4.05	$5.12	$9.17
	Net	**$65.99**	**$233.61**	**$554.39**	**$626.09**	**$1180.48**
Participants	Benefit	$72.00	$269.01	$466.02	$515.28	$981.30
	Cost			$371.32	$445.59	$816.91
	Net	**$72.00**	**$269.01**	**$94.70**	**$69.69**	**$164.39**
Providers	Benefit	$140.91	$510.65	$880.39	$972.82	$1853.20
	Cost	$1.06	$201.97	$310.00	$583.12	$893.11
	Net	**$139.85**	**$308.68**	**$570.39**	**$389.71**	**$960.09**
Total		**$277.84**	**$811.30**	**$1,219.48**	**$1085.49**	**$2304.97**

5.4.4 Competition analysis

Of all five elements, the provider registration element is expected to have the greatest impact on competition.

The key comparative findings are outlined below.

Table 51 provides a summary of the analysis across each option.

Table 51: Competition analysis – provider registration

Key LOE	Topic	Questions	Option 1	Option 2	Option 3	Option 4
1. Does the option impact on business market entry	**Market entry**	Does the option impose regulatory barriers to market entry?				
		Does the option increase costs to market entry?				

Key LOE	Topic	Questions	Option 1	Option 2	Option 3	Option 4
and operations?	**Provider operations**	Does the option limit the ability of some types of providers to provide some services?	○	○	◔	◔
2. Does the option restrict the competition process?	**Customer access to services**	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?	○	○	○	○
		Does the option reduce providers' ability to adapt / innovate their service offer	○	○	◔	◑
	Market information	Does the option limit providers' freedom to advertise or market their offer?	○	○	○	○
		Does the option limit providers' ability to set independent prices?	○	○	○	○
		Does the option limit the information available to consumers?	○	○	○	○
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?	○	○	◔	◑
3. Does the option generate a net social benefit?			Low	Med	Med-High	High

Key – Impact on competition

○ No impact ◔ Minimal impact ◑ Moderate impact ◕ Signficant impact ● Extreme impact

Market entry

Option 1 imposes the lowest regulatory barriers to entry, as the option only requires compliance with basic legal requirements and a Code of Conduct. Option 2 requires additional conditions for registration and is applicable to all providers. Options 3 and 4 would apply on top of Option 2 – but only to certain types of providers.

Of these additional options, Option 4 imposes the higher regulatory barrier to entry, also requiring providers to demonstrate compliance with recognised industry governance and management standards and achieve certification with a recognised certification/accreditation body. This represents a high barrier to entry for providers delivering supports likely to involve potential for high risk to participants. It is possible that potential new providers – especially providers that are small and unused to providing regulated services – might decide not to enter the market for these 'high risk' services, on the ground that the regulatory barriers are too high. Research from the UK has linked the robust registration process to the unmet demand for disability services.[111]

[111] Lumin Collaborative (2013), *National Disability Insurance Scheme Practical Design Fund: Potential Unintended Consequences of Self-Managed Support Packages & Appropriate Strategies and Safeguards to ensure People obtain the Full Benefit of Self-Managed Supports*, Commissioned by DFHCSIA Melbourne, Australia, p. 104.

The impact on costs to market entry increases for each option. Additional costs associated with options 1 and 2 are expected to remain relatively low, as each option only requires that standard registration requirements are met, and any additional evaluation or certification is voluntary. In contrast, Option 4 will impose the greatest costs to market entry for affected providers. These providers will be required to obtain, at their own cost, external accreditations or certification upon entry into the market.

Provider operations

Options 1 and 2 will apply equally to all providers. However options 3 and 4 will impose additional regulatory requirements on providers delivering supports that create potential for high risk to participants. The independent quality evaluation requirements in Option 3 and the evaluation plus accreditation requirements in Option 4 may serve to limit providers' ability to supply such supports. This could result in a highly competitive market for low risk services, but insufficient providers – and hence reduced competition – among those providers registered to provide high risk services.

Competition process

Option 1 and 2 do not impact on providers' ability to innovate or adapt their service offer, provided no registration requirements are infringed. Options 3 and 4 discourage providers involved in low risk supports from adapting their service offer to include high risk supports, until the required evaluation process has been implemented or accreditation achieved. This could result in a time delay to adaption, reducing providers' ability to respond nimbly to market demand.

This element does not impact on providers' ability to advertise or independently price set, or for consumers to access information. In fact, under options 3 and 4, the requirement to undertake independent quality evaluations will increase the information available to participants, with high results operating as a point of competitive advantage. In relation to consumer choice and switching, this will depend on the level of need.

Under options 3 and 4, participants requiring high risk supports will only be able to switch to similarly registered providers.

Social benefit

On balance, the competition analysis should not materially change to the assessment of net benefits discussed at the beginning of this competition analysis.

5.5 Restrictive practices – authorisation

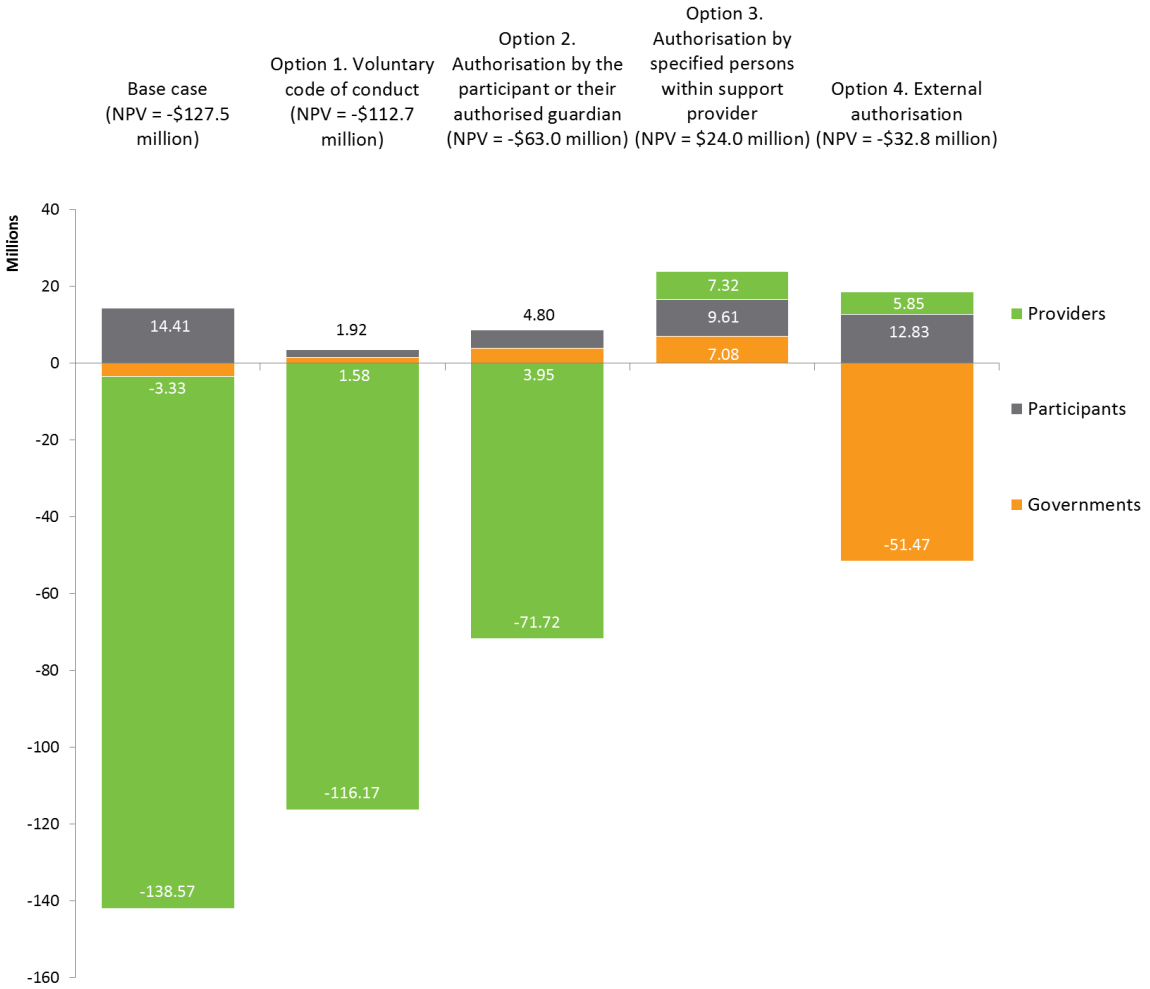
The impact analysis will consider the different aspects of the Restrictive Practices element (authorisation and monitoring) separately. In both cases, active government intervention is necessary to give providers the resources to reduce the frequency with which they use restrictive practices.

Summary

Most of the authorisation options within this element involve the development and approval of behavioural support plans (BSPs). These plans are intended to properly manage participants who exhibit challenging behaviour. Developing BSPs is a time consuming process. Estimates indicate that the process may include interviewing the participant, meeting with the participant's family, reviewing clinical notes and past plans, drafting the plan and obtaining responses. It may take two weeks of full time work, over a six to eight week period.

The intensity of this work amounts to a significant cost, which is reflected in the NPV results which is negative for all options by option 3. See Figure 46 below.

Figure 46: Summary of NPV for restrictive practices authorisation element



5.5.1 Background

Australian governments have committed to the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector.[112] Nevertheless, the rate at which restrictive practices are used in Australia is relatively high when compared to jurisdictions such as the United Kingdom (23%-28% of residents in respite or accommodation services being subject to restrictive practice, compared to 7%-17%).[113] In the provider survey, more than one third of respondents (36%) indicated that they used restrictive practices to manage challenging behaviour.

Restrictive practices can take many forms including chemical restraint, mechanical restraint, seclusion and physical restraint. The Office of the Senior Practitioner in Victoria reported that the most common form of restraint in chemical restraint.[114] A survey of BSPs created in 2006/07 found that 78% involved chemical restraint, 7% involved mechanical restraint, and 9% reported that seclusion would be used. Approximately one in eight BSPs (12%) proposed more than one restrictive intervention.

Regardless of the type of restraint used, restrictive practices are costly. Relevant costs include:

- ***Physical and psychological harm to participants*:** The physical and psychological costs of restrictive practices to participants have been well documented. Physical injuries can result from restrictive practices which may lead to decreased functioning or longer stays in care.[115] Even where a restrictive practice does not cause physical injury, people who experience restraint often report feeling physical pain and fatigue,[116] as well as psychological harm including trauma.[117]
- ***Reduced quality of life for participants:*** People with disability that experience restrictive practices report a feeling unsafe and helpless which impacts their quality of life.[118] Many people who are restrained describe feeling anger, fright, humiliation, sadness, powerlessness, disorientation and vulnerability.[119] In one study, almost three quarters (73%) of participants who had been subject to restrictive practices reflected on the experience negatively and claimed they had not been a danger to themselves or others at the time of the intervention.[120]
- ***Reduced quality of care:*** There is no clinical evidence to support the use of restrictive practices to manage challenging behaviour and therefore, their use reduces the quality of care provided. Additionally, it can significantly harm the clinical relationship between the patient and the clinician, leading to distrust of service providers.[121]

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[112] Department of Social Services (2014), *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.*

[113] McVilley, K (2009), *Physical Restraint in Disability Services: Current Practices, Contemporary Concerns and Future Directions*. Note, however, that the surveys might be addressing different groups: individuals in accommodation services vs individual with disability generally).

[114] Office of the Senior Practitioner (2008), *Annual Report 2007/8*. Department of Health and Human Services, Victoria, Australia.

[115] LeBel, J (2009), *The Massachusetts Department of Mental Health Statewide Restrain and Seclusion Prevention Initiative*.

[116] Hawkins et al (2004), *The Use of Physical Interventions with People with Intellectual Disabilities and Challenging Behaviour - the Experiences of Service Users and Staff Members*, Journal of Applied Research in Intellectual Disabilities, vol. 18, pp. 19-34.

[117] Bonner, G, Lowe, T, Rawcliffe, D & Wellman, N (2002), *Trauma for All: A Pilot Study of the Subjective Experiences of Physical Restrain for Mental Health Inpatients and Staff in the UK*.

[118] Chan, J, LeBel, J & Webber, L (2012), *The Dollars and Sense of Restraints and Seclusion*. Office of the Senior Practitioner (2009), *Experiences of restrictive practices: A view from people with disabilities and family carers.*

[119] Equip for Equality (2011), Ofsted (2012). Hawkins et al (2004).

[120] Ray, NK, Myers, KJ & Rapporport, ME (1996), *Patient perspective on restraint and seclusion experiences: a survey of former patients of New York State psychiatric facilities*, Psychiatric Rehabilitation Journal, vol. 20, no. 1, pp. 11-18.

[121] Chan, J, LeBel, J & Webber, L (2012), *The Dollars and Sense of Restraints and Seclusion*.

- ***Increased costs to service providers***: There is increasing evidence that it costs more for providers to use restrictive practices than to use other interventions.[122] The cost of staff time alone has been estimated to be $250 – $350 per incident of restrictive practice.[123]

In the provider survey, 11.4% of providers using restrictive practices reported having a client or staff member suffer serious injury. This generally occurred once or twice per year, although several providers indicated much higher rates of serious injury.

The distribution between jurisdictions is set out in Table 52. Queensland, Victoria and NSW had the highest rates of reported restrictive practices use; it could be that these differences are due to tighter reporting requirements and associated awareness of what responses constitute restrictive practices.[124]

Table 52: Provider survey responses declaring use of restrictive practices, by jurisdiction

	State/Territory								
Use RP?	**ACT**	**NSW**	**NT**	**QLD**	**SA**	**TAS**	**VIC**	**WA**	**Grand Total**
Responses	17	97	1	32	39	6	56	10	258
Yes	18%	39%	0%	47%	15%	17%	46%	50%	36%
No	82%	60%	100%	53%	79%	83%	50%	50%	62%
I don't know	0%	1%	0%	0%	5%	0%	4%	0%	2%
Grand Total	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**

Research demonstrates that staff training and effective BSPs have a number of benefits:

- appropriate staff training can significantly improve the safe application of restrictive practices[125]
- appropriate staff training can significantly reduce use of restrictive practices, the duration of use of restrictive practices and the rates of injury to staff and clients.[126]

Positive BSPs can significantly reduce the use of restrictive practices, with one study finding that they result in an 80% reduction in challenging behaviours that require restrictive practice over 70% of the time.[127]

In consultations for this impact analysis, stakeholders have emphasised that regardless of authorisation and monitoring regime, providers must be encouraged and supported to implement best practice staff training on restrictive practices.

[122] Chan, J, LeBel, J & Webber, L (2012), *The Dollars and Sense of Restraints and Seclusion*.
[123] Chan, J, LeBel, J & Webber, L (2012), *The Dollars and Sense of Restraints and Seclusion*.
[124] Please note that comparatively few respondents from smaller jurisdictions answered this question, so it is difficult to draw firm conclusions about the rates of use.
[125] McDonell et al (2000), *Evaluating the Risks associated with Physical Interventions*
[126] Foster, P, Cavness, C & Phelps, M (1999). *Staff Training Decreases Use of Seclusion and Restraint in Acute Psychiatric Hospital*
[127] Carr et al (1999). *Positive Behavioural Support for People with Developmental Disabilities. A Research Synthesis.*, Washington: AAMR.

Assumptions

The general assumptions for the overall cost benefit analysis are set out in Section 4. In addition to these assumptions, we have had to place a value on the benefit of avoiding unnecessary restrictive practices. No data is available that estimates this value. We have therefore developed a proxy value using the same valuation methods that are used to value SAEs (see Appendix E). We have based the proxy on the cost per incident of assaults to an individual when the individual is injured, but no medical treatment is required.[128] The cost includes lost output and intangible costs.

It is appropriate in this context to note that the costs and benefits in this element are significantly smaller than those of previous elements. As mentioned above, generally speaking, people who exhibit the requisite challenging behaviour live in residential facilities, and of these, only 25% exhibit the sorts of behaviours that might require restrictive practices.

Base Case

The base case differs significantly between jurisdictions, and each jurisdiction's regulatory regime involves a combination of different options:

- Northern Territory, Queensland and South Australia have regulation with the same effect as Option 2
- NSW, Victoria and Western Australia have regulation like Option 3 in place
- Tasmania and Queensland have regulation like Option 4 in place, and Queensland is considered to have a more robust version.

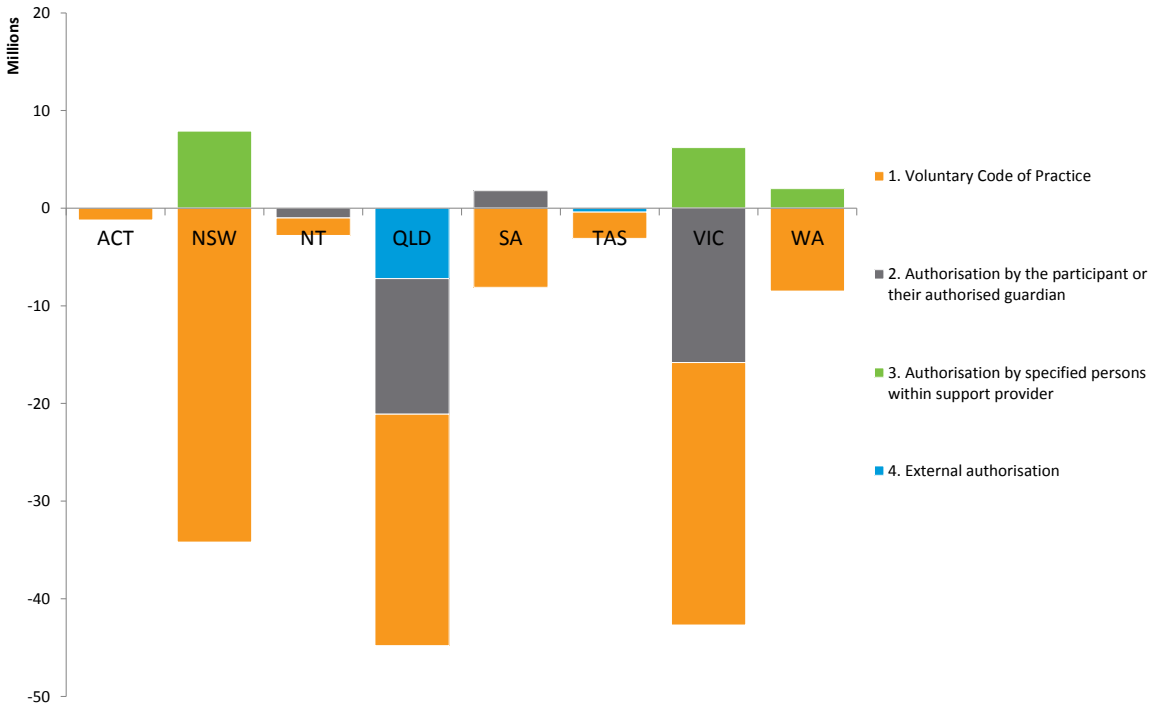
This variation in regulatory regimes produces differences in the respective NPV of each jurisdiction (see Table 53 and Figure 47). The overall, negative, value of the base case is -$127.5 million.

Table 53: NPV base case for restrictive practices authorisation by options and jurisdiction ($ millions)

Jurisdiction	1. Voluntary Code of Practice	2. Authorisation by the participant or their authorised guardian	3. Authorisation by specified persons within support provider	4. External authorisation	Total Base Case
ACT	-$1.22	-	-	-	-$1.22
NSW	-$34.2	-	$7.9	-	-$26.3
NT	-$1.8	-$1.0	-	-	-$2.7
QLD	-$23.7	-$13.9	-	-$7.2	-$44.8
SA	-$8.1	$1.8		-	-$6.2
TAS	-$2.7	-	-	-$0.4	-$3.1
VIC	-$26.9	-$15.8	$6.2	-	-$36.5
WA	-$8.5	-	$2.0	-	-$6.6
Total	**-$107.0**	**-$32.6**	**$16.0**	**-$7.6**	**-$127.5**

[128] Russell G Smith, Penny Jorna (2014) *Counting the costs of crime in Australia: A 2011 estimate*

Figure 47: Breakdown of NPV for the restrictive practices base case by options and jurisdiction



5.5.2 Analysis of options

Option 1 – Voluntary code of practice

This option imposes no compliance costs on providers, as providers do not need to demonstrate they are complying with regulation. However, a lack of guidance may lead to increases in the use of restrictive practices, in which case providers' overall costs will also increase.[129] Research has shown that without regulation, staff often use restrictive practices when other interventions would be effective and that when regulation is introduced the use of restrictive practices decreases significantly.[130]

Furthermore, consultations with Senior Practitioners confirmed that when BSPs are not formally required, they will be implemented inconsistently. This is despite the clear evidence that quality BSPs reduce the need to use restrictive practices.[131]

It follows that, if this option were to be deployed, those jurisdictions that have authorisation systems for the use of restrictive practices would experience significant increases in the use of restrictive practices. This increase would lead to rises in the overall costs that providers incur in this area.

[129] Chan, J, LeBel, J & Webber, L (2012), *The Dollars and Sense of Restraints and Seclusion*.

[130] Butler, J (2015). *How Safe is the Schoolhouse? An Analysis of State Seclusion and Restraint Laws and Policies*, The Autism National Committee, p. 2. Data provided to Nous by Queensland Government.

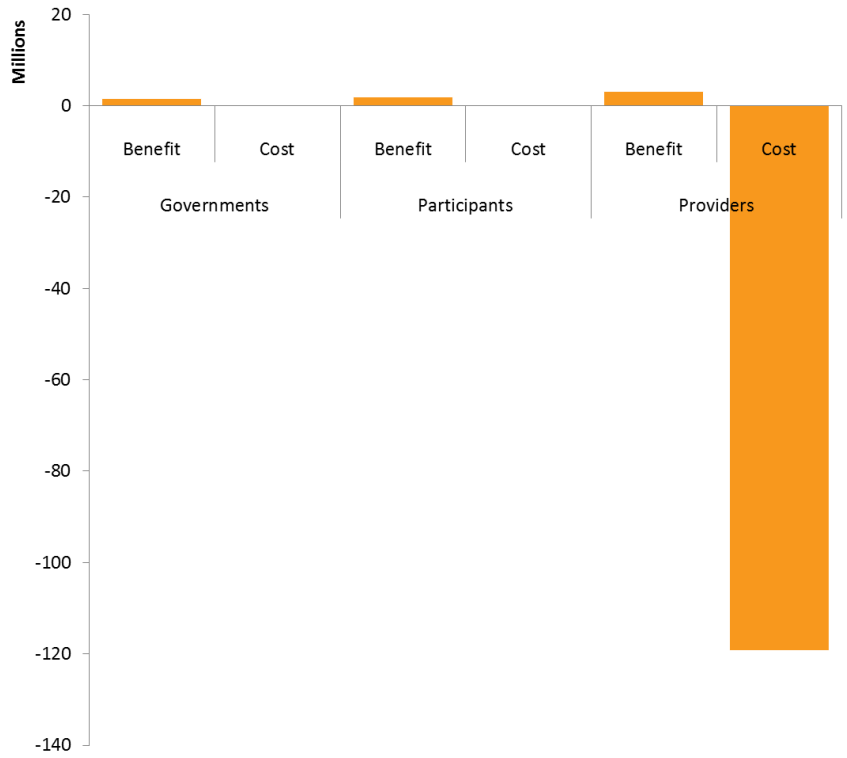
[131] Carr et al (1999). *Positive Behavioural Support for People with Developmental Disabilities. A Research Synthesis*. Washington: AAMR.

Distribution Analysis

Option 1 delivers an overall, negative NPV of **-$112.7 million**. This NPV is dominated by the costs to providers and, in particular, the need to make redress for assaults that participants experience (see Figure 48).

Note that this model does not alter the rates at which participants experience assaults, or the rate at which redress is made for assaults: these costs form part of the background 'unregulated' state (see Section 4.1).

Figure 48: distribution of costs and benefits: Option 1 of restrictive practices authorisation



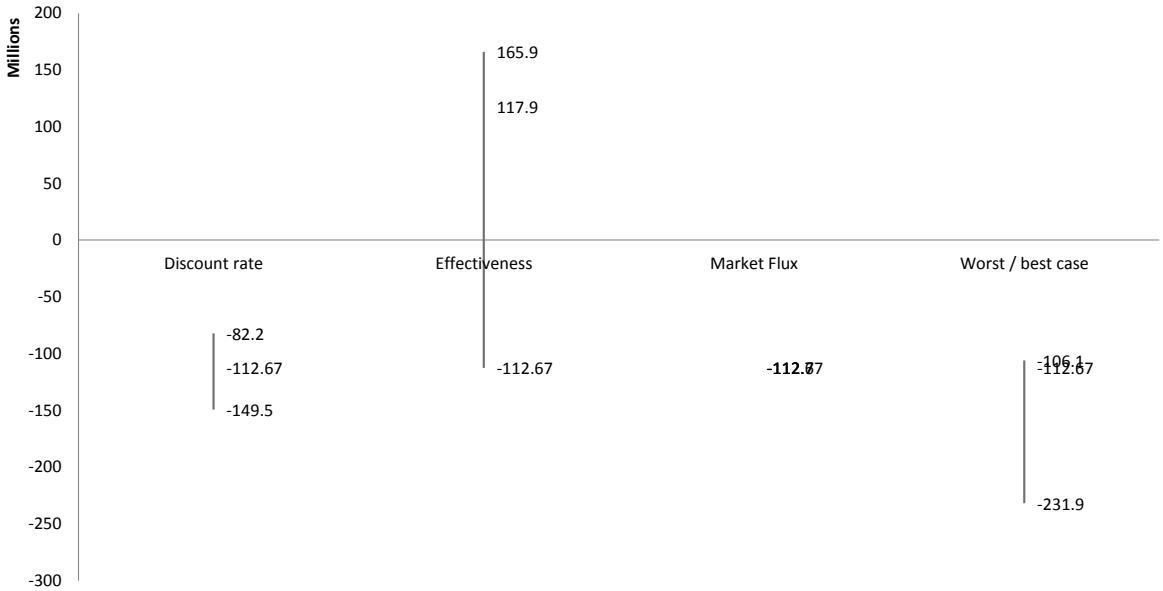
Sensitivity Analysis

Sensitivity analysis indicates that the NPV calculations are robust following testing using discount rate, market flux, and worst/best case analysis, see Figure 49.

As with other 'light touch' regulatory options considered in this report, effectiveness analysis is potentially problematic. Effectiveness sensitivity analysis varies the impact of the option on SAE incidence by ±5% –- far more than the reduction in SAE that Option 1 is projected to cause. A 5% reduction in the incidence of SAEs is not a likely result from self-regulation, and does not accord with previous experience, so it is appropriate to discount this specific sensitivity analysis.

The negative NPV finding therefore can be considered as comparatively robust.

Figure 49: Sensitivity analysis: Option 1 of restrictive practices authorisation



Regulatory Burden Analysis

Table 54 sets out the regulatory burden for Option 1 for restrictive practices authorisation, which amounts to $8 million per annum. If governments were to replace the base case with a comprehensive regulatory regime based on Option 1, the removal of regulatory burdens associated with dismantling the base case would fully offset the regulatory burden that the new regulatory regime imposed.

Table 54: Regulatory burden and cost offset estimate: Option 1 of Restrictive Practices Authorisation

Average annual regulatory costs for Restrictive Practices - Authorisation (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$8.0 million	nil	$8.0 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$21.5 million	nil	$21.5 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 2 – Substitute decision maker must be a formally appointed guardian

This option will reduce the rate of restrictive practices in comparison to a situation where providers made the decision themselves. Generally speaking, carers acting as substitute decision-makers will be able to interrogate whether restrictive practices are necessary in the circumstances contemplated by the BSP, and may be able to suggest alternative methods of distracting the participant or de-escalating the participant's behaviour.

There are two risks that might have to be managed if Option 2 were adopted. The first is the risk associated with a conflict of interest: guardians who are informal carers may have a conflict of interest when authorising RPs, as RPs are likely to make their caring duties easier. This conflict might make them less likely to fulfil their role as a substitute decision maker. The other risk is that the carer accedes to the provider's wishes, on the basis that the provider has expertise in the area. However, assuming that these risks are relatively well manage, Option 2 is expected to improve participant's overall care and quality of life, and reduce i) physical and psychological harm to participants, and ii) providers' costs.

Responses to the provider survey indicated that it takes on average 0.3 FTE per annum to engage with guardians on BSPs that include restrictive practices. This figure would likely to increase if guardians were substitute decision makers. It would entail increased costs to providers, but this cost would be offset to some extent by the reduction in costs flowing from SAEs.

In addition to the time taken to gain consent from guardians, providers also incur costs from developing a voluntary code and developing and reviewing BSPs.

A further consideration is the potential for increased demand on Public Guardian and Public Trustee (or equivalent offices in each jurisdiction) relating to people who are identified as having impaired capacity. However these costs have not been included in the modelling as without further data they would have been largely speculative.

Distribution Analysis

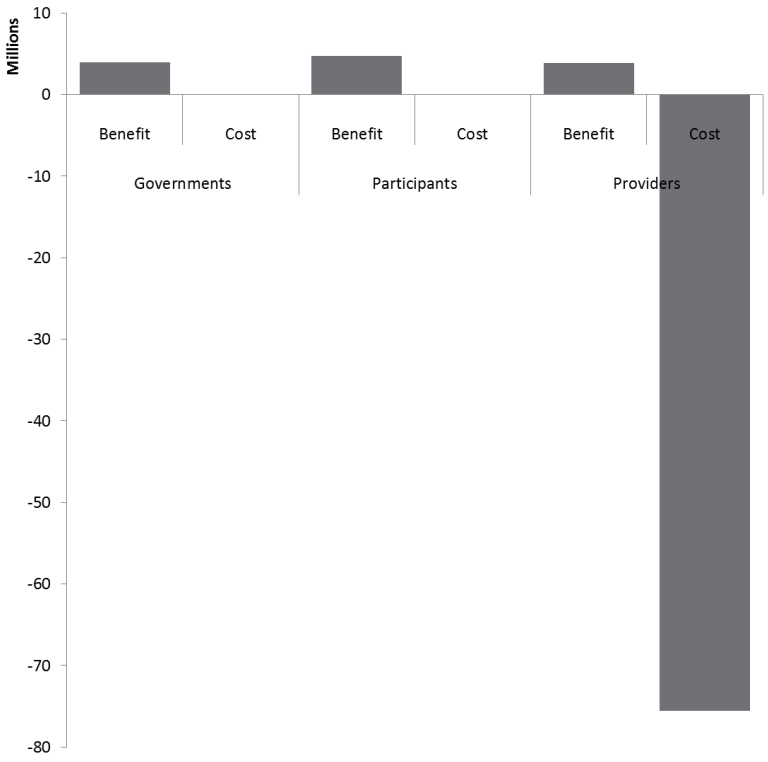
Option 2 delivers an overall, negative NPV of **-$63.0 million**. Figure 50 sets out the distribution of costs and benefits.

As with Option 1, there are small benefits for each stakeholder group, but the combined benefits are overwhelmed by the administrative and redress costs that providers incur.

The costs of this option are generally borne by providers. Governments would bear a nominal initial cost for setting up mechanisms or systems in place for formally appointed guardians, but these costs will be overwhelmed by other cost drivers.[132]

[132] Seethe discussion in relation to Option 1 of Provider Registration.

Figure 50: distribution of costs and benefits: Option 2 of Restrictive Practices Authorisation

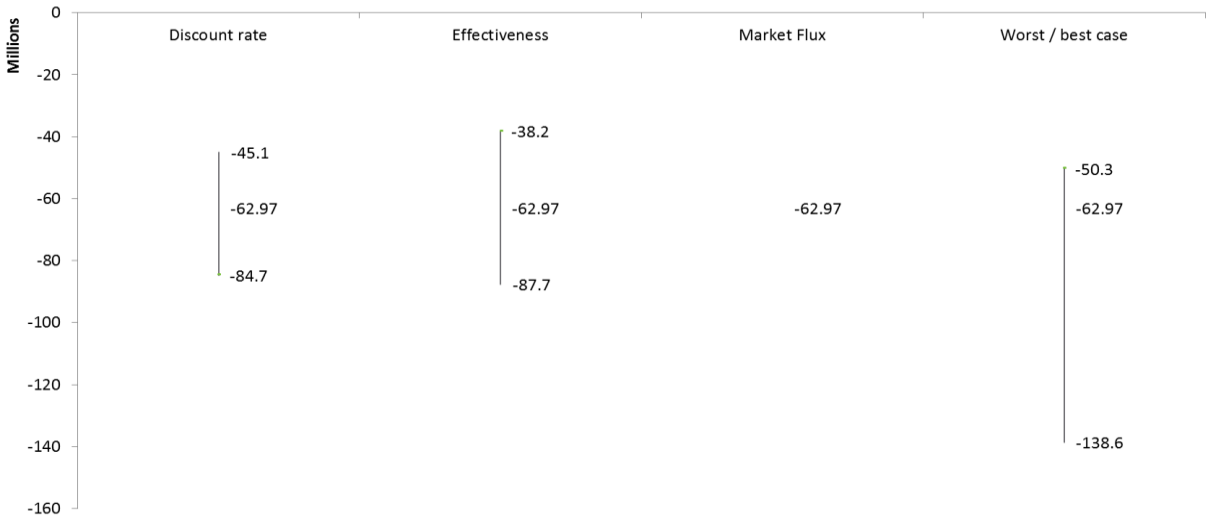


Sensitivity Analysis

Sensitivity analysis indicates that this option maintains its negative NPV across all four dimensions of sensitivity (discount rate, effectiveness, market flux and worst/best case scenario.) See Figure 51.

In this case, provider costs amount to $72 million, which anchors the CBA as a negative outcome, even accounting for variations in effectiveness.

Figure 51: Sensitivity analysis: Option 2 of restrictive practices authorisation



Regulatory Burden Analysis

The regulatory burden for Option 2 is $10.17 million per annum: this is the lowest regulatory burden of all the options in this element (see Table 55). The reduction occurs because discussions about restrictive practice now take place between providers and guardians, and therefore only involve government in extreme circumstances. As a result of this, the regulatory burden is less than half the regulatory burden constituted in the base case.

Table 55: Regulatory burden and cost offset estimate: Option 2 of Restrictive Practices Authorisation

Average annual regulatory costs for Restrictive Practices - Authorisation (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$10.2 million	nil	$10.2 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$21.5 million	nil	$21.5 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 3 – Providers authorised to make decisions under specific conditions

Research has demonstrated that effective monitoring and decision making at a service provider level can reduce the use of restrictive practices.[133] However, it should be noted that these reductions only occur when services implement best-practice monitoring and decision making processes.

Expert advice suggests that without effective decision making at a provider level, providers may acquiesce to the use restrictive practices in a way that reflects organisational considerations as much as the client's best interest.

Some providers will already have robust authorisation processes in place for the use of restrictive practices. In responses to the provider survey, only one of 36 respondents who used restrictive practices did not have a formal authorisation process in place. This suggests that few providers would face increased compliance costs in establishing and using a formal process for authorising restrictive practices.

Distribution Analysis

Option 3 delivers an NPV of **$24.0 million**, which makes Option 3 the only option in this element that delivers a positive NPV.

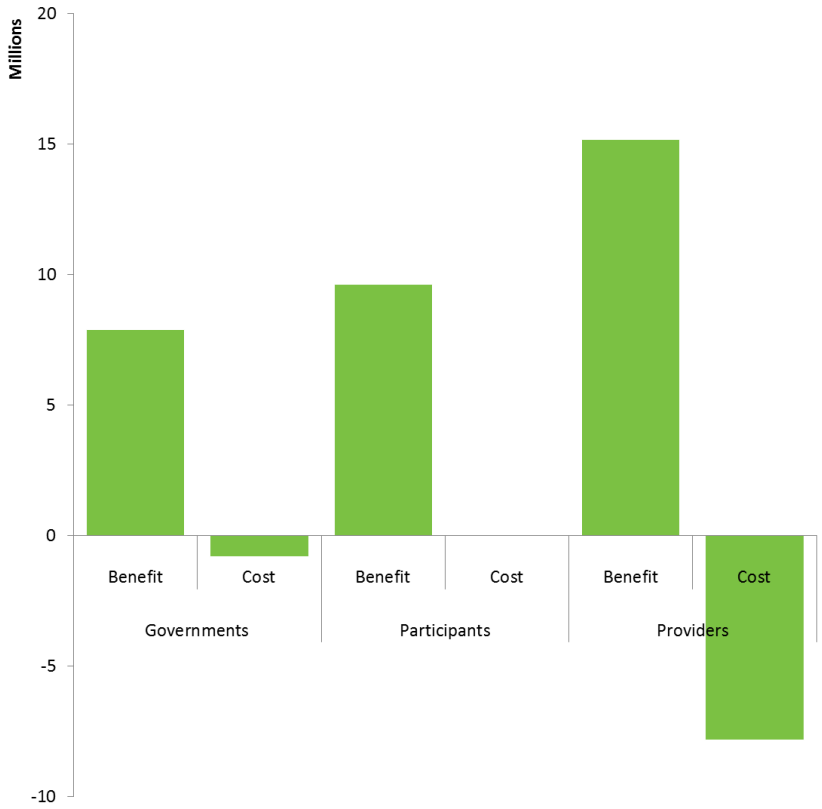
Option 3 differs from Option2 and Option 4 because providers are not required to seek external authorisation, and therefore incur fewer compliance costs in the discussion of whether or not to utilise restrictive practices.

[133] Sanders, K (2009). *The Effects of an Action Plan, Staff Training, Management Support and Monitoring on Restraint Use and Costs of Work-Related Injuries*, Journal of Applied Research in Intellectual Disabilities, vol. 22, pp. 216-220.

By centralising internal decision-making to authorised officers who have the training and experience to decide when the use of restrictive practice is authorised, Option 3 is projected to reduce the inappropriate use of restrictive practices, and hence the incidence of SAEs, albeit not to the same extent that Option 4.

As a result of this reduction, Option 3 achieves benefits for all stakeholder groups (see Figure 52).

Figure 52: distribution of costs and benefits: Option 3 of restrictive practices authorisation

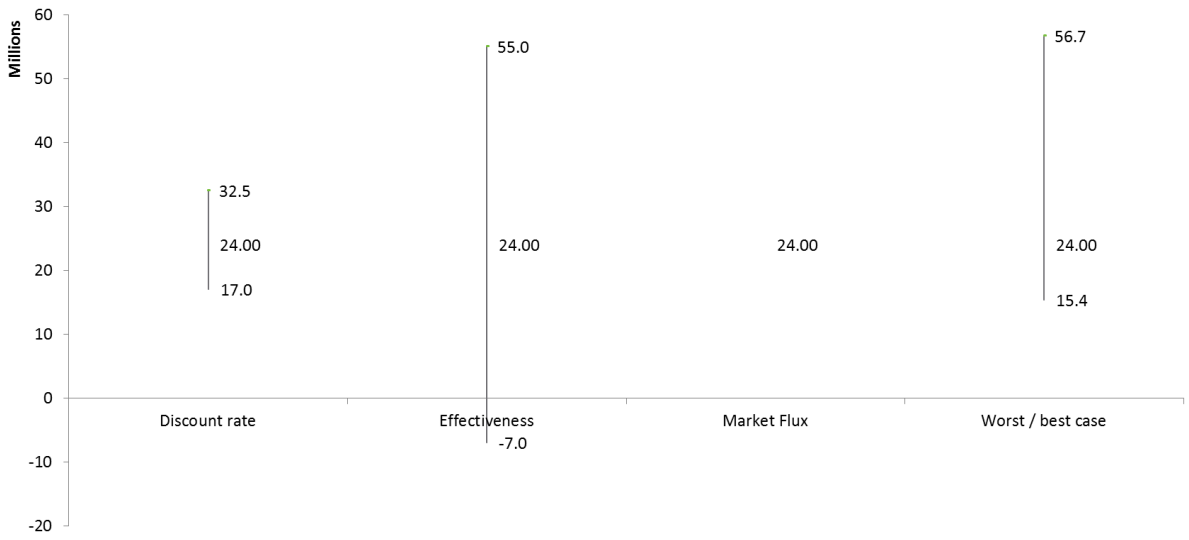


Sensitivity Analysis

The benefits that Option 3 is projected to achieve derive from the assumed potential to achieve reductions in SAEs.

The sensitivity analysis indicates that, if the model has overstated this capacity, the option will not deliver a positive NPV, see Figure 53).

Figure 53: Sensitivity analysis: Option 3 of restrictive practices authorisation



Regulatory Burden Analysis

If government were to authorise people within the provider's internal structure to make restrictive practices decisions, it would minimise the regulatory burden that Option 3 represents, and the base case regime would constitute a complete offset (see Table 56).

Table 56: Regulatory burden and cost offset estimate: Option 3 of Restrictive Practices Authorisation

Average annual regulatory costs for Restrictive Practices - Authorisation (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$1.1 million	nil	$1.1 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$21.5 million	nil	$21.5 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 4 – Authorisation only by independent decision maker

This option will significantly reduce the use of restrictive practices. In Queensland, some providers reduced their use of restrictive practices by up to 95% when regulation was introduced; the overall reduction was approximately 70%.[134] Other research indicates that accidental injury and death from the

[134] Expert advice provided to Nous by Queensland Government.

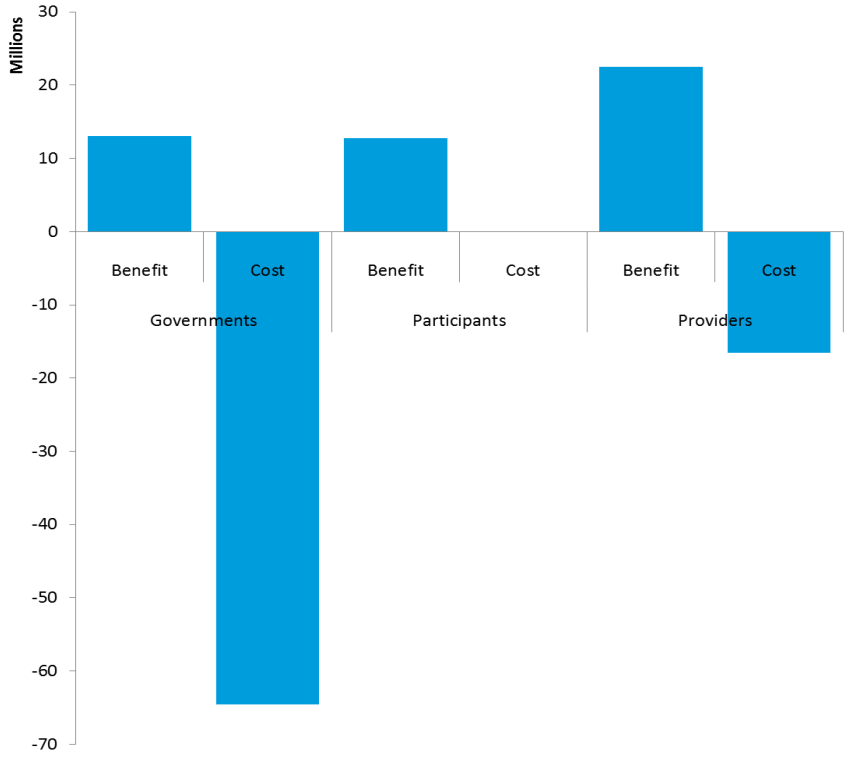
use of restrictive practices decline when restrictive practices are used appropriately and authorised by government.[135]

It is likely that an independent decision maker would be funded and operated by government, similar to the Offices of Senior Practitioners that currently exist in some jurisdictions.[136] This option would therefore likely involve an increased cost to the Commonwealth Government to establish a national independent decision maker. This cost would be partially offset by a reduction in costs for state and territory governments that already have decision makers in place.

Distribution Analysis

Historically, the Office of the Senior Practitioner has engaged intensively with providers who use restrictive practices. Where they succeed in assisting providers, they encourage a more intensive and collaborative approach to building BSPs, and therefore increase the costs that providers incur. As such, under the logic of the CBA, the model projects a negative NPV of **-$32.8 million** for this option, despite achieving the highest benefits of all of the options in this element. The negative NPV results primarily from the increased costs to government associated with creating and resourcing the Office of the Senior Practitioner or its equivalent (see Figure 54).

Figure 54: distribution of costs and benefits: Option 4 of restrictive practices authorisation



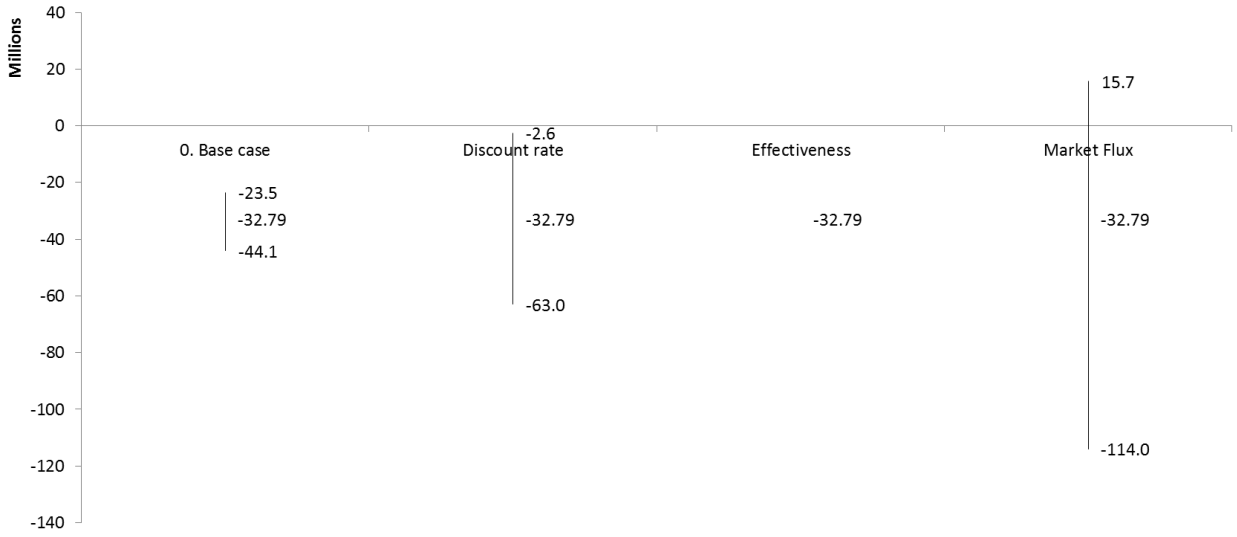
[135] Equip for Equality (2011), *National Review of restraint related deaths of children and adults with disabilities*.

[136] An alternative example is the Queensland Centre of Excellence for Clinical Innovation and Behaviour Support which been funded by the Queensland Government to provide support for the sector to deliver best practice in behaviour supports, especially for people subject to restrictive practices

Sensitivity Analysis

Sensitivity analysis for Option 4 indicates that NPV remains negative across all four dimensions (see Figure 55). The extra costs associated with the Office of the Senior Practitioner anchor the NPV as negative, even considering the possibility of significantly increasing the success in preventing SAEs.

Figure 55: Sensitivity analysis: Option 4 of restrictive practices authorisation



Regulatory Burden Analysis

Regulatory burden analysis indicates that the regulatory burden of Option 4 is $2.24 million, which offsets the regulatory burden of the base case ($21.52 million).

Table 57: Regulatory burden and cost offset estimate: Option 4 of Restrictive Practices Authorisation

Average annual regulatory costs for Restrictive Practices - Authorisation (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$2.2 million	nil	$2.2 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$21.5 million	nil	$21.5 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

5.5.3 Maximising the Net Present Value

Table 58 sets out the comparison of costs and benefits between the individual options and the base case. Comparing the individual options:

- Option 1 produces the largest negative NPV. Providers incur greater costs from developing BSPs and a voluntary code and increased need to redressed incidents, and realise lower benefits from the avoidance of adverse incidents.
- Option 2 produces a significant negative NPV as a result of the labour costs associated with obtaining a guardian's consent to the use of restrictive practices.
- Option 3 produces the only positive NPV, as it imposes minimal costs on providers and government.
- Option 4 achieves the greatest reductions in adverse incidents but produces a negative NPV because it imposes costs on providers and government.

The options in this element are mutually exclusive (see Table 16 on page 39), so no combination of options is possible.

Table 58: Distribution of NPV per option, by stakeholder group ($ million)

		1: Voluntary code of practice	2: Substitute decision makers must be a formally appointed guardian	3: Providers authorised to make decisions under specific conditions	4: Authorisation only by independent decision maker
Governments	Benefit	$1.60	$3.90	$7.90	$13.10
	Cost	0	0	$0.80	$64.60
	Net	**$1.60**	**$3.90**	**$7.10**	**-$51.50**
Providers	Benefit	$3.00	$3.90	$15.10	$22.50
	Cost	$119.20	$75.60	$7.80	$16.60
	Net	**-$116.20**	**-$71.70**	**$7.30**	**$5.90**
Participants	Benefit	$1.90	$4.80	$9.60	$12.80
	Net	$1.90	$4.80	$9.60	$12.80
Total		**-112.7**	**-63.0**	**24.0**	**-32.8**

5.5.4 Competition analysis

Table 59 sets out a summary of the competition analysis for the Authorisation aspect of the Restrictive Practices element.

Table 59: Competition analysis – Restrictive practices authorisation

Practices	Topic	Questions	Option 1	Option 2	Option 3	Option 4
1. Does the option	**Market entry**	Does the option impose regulatory barriers to market entry?				

Practices	Topic	Questions	Option 1	Option 2	Option 3	Option 4
impact on business market entry and operations?		Does the option increase costs to market entry?				
	Provider operations	Does the option limit the ability of some types of providers to provide some services?				
2. Does the option restrict the competition process?	**Customer access to services**	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?				
		Does the option reduce providers' ability to adapt / innovate their service offer				
	Market information	Does the option limit providers' freedom to advertise or market their offer?				
		Does the option limit providers' ability to set independent prices?				
		Does the option limit the information available to consumers?				
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?				
3. Does the option generate a net social benefit?			Low	Med	Med-High	Med-High

Key – Impact on competition

 No impact

 Minimal impact

 Moderate impact

 Signficant impact

 Extreme impact

Market entry

The implementation of a voluntary code of practice under Option 1 does not introduce any regulatory barriers for providers to enter the market.

Option 3 imposes the highest regulatory barrier to market entry, as providers will need to establish and demonstrate internal restrictive practice mechanisms (i.e. an authorised program officer or panel of authorised officers) in order to enter the market. For options 2 and 4, providers will only need to establish processes for interaction with formal guardians (Option 2) or independent decision makers (Option 4).

Option 3 will similarly increase costs to market entry by the greatest amount, and providers will be required to establish internal authorisation mechanisms prior to market entry. This cost is expected to be relatively significant.

Option 4 will likely be more costly to implement than Option 2, as processes to engage with an external independent decision maker (such as a tribunal) are expected to be more complex than engagement with legal guardians.

Compliance with Option 1 will also result in increased costs, as staff are trained in the new code of practice. However this cost will be relatively minimal in comparison with the other options.

Provider operations

Option 1 will operate equally across all providers and will have the least impact on provider operations. In many instances, providers are already operating under some form of code of practice or operating procedures with respect to restrictive practices. Option 2 is also anticipated to have a low impact of provider operations as it reflects the formalising of guardian/carer engagement and approval processes that already occur within many providers.

Option 3 is likely to affect some providers' ability to deliver services to participants who may require restrictive practices. The requirement to establish provider-initiated panels or employ and train authorised program officers may not be feasible for smaller providers who only deal with restrictive practice matters infrequently. Therefore Option 3 could decrease the ability for this cohort to provide services to participants with potential restrictive practice requirements.

Option 4 may also impact on providers' ability and/or motivation to deliver services to participants requiring restrictive practice approvals, due to the time and resources associated in engaging with independent decision makers or tribunals. This might result in constrained supply for participants who exhibit challenging behaviours.

Competition process

This element does not limit providers' ability to innovate or adapt their service offer. No option proposed reduces their freedom to advertise or set independent prices. Similarly, no option in this element restricts the information available to participants, or impacts customer choice or ability to switch providers.

Social benefit

There is an important social objective in reducing the use of restrictive practices across the sector, and increasing protection for people with a disability who may be subject to this use.

Option 1 and Option 2 are unlikely to have any substantive impact on competition, but are also less likely to achieve the desired social objective. Based upon the expert advice Nous has received, Option 1 is least likely to achieve this objective as the code of practice introduced will be voluntary and not subject to any form or enforcement or monitoring of compliance. Option 2, while formalising the role of guardians, is expected to create an unsustainable burden on guardianship tribunals and hence create delays in the appointment of formal guardians.

Options 3 and 4 increase the cost to providers to implement the required process for decision making – and are more likely to impact on competition. However, these options are also more likely to achieve the desired social benefit of introducing an authorisation regime for restrictive practices, hence reducing use of restrictive practices.

Option 3 will ensure that appropriately qualified officers or panels have oversight of decisions relating to restrictive practices. Additionally, as decision makers are provider-appointed, it is anticipated that decisions could be made in a timelier manner than engaging with independent tribunals or a senior practitioner.

Option 4 establishes a clear separation between the provider and the decision-maker, creates clear pathways of accountability and introduces a high level of technical expertise that could also contribute to education of best practice in reduction strategies.

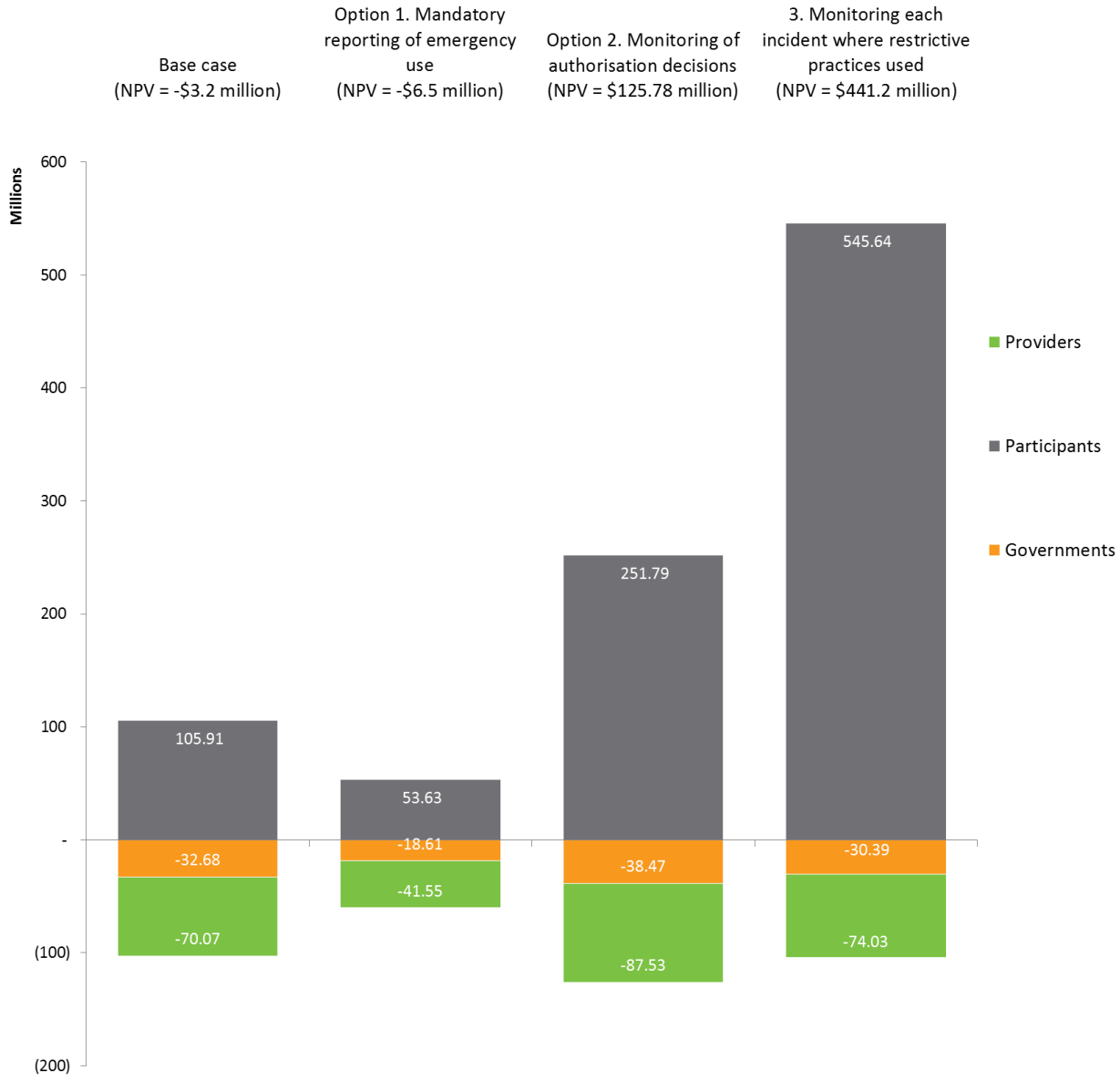
Overall, the competition impact associated with options 3 and 4 is insufficient to materially impact on the net benefit assessment set out above.

5.6 Restrictive Practices – monitoring

Summary

Monitoring the use of restrictive practices places a burden on both government and providers to maintain information. The costs associated with this can be offset by the benefits of reduced harm to staff as well as participants that can come with a reduction in the unnecessary use of restrictive practices. Each option in this element therefore produces a positive NPV (see Figure 46).

Figure 56: Summary of NPV for restrictive practices monitoring element



5.6.1 Background

The general discussion of the use restrictive practices is set out in section 5.5.1

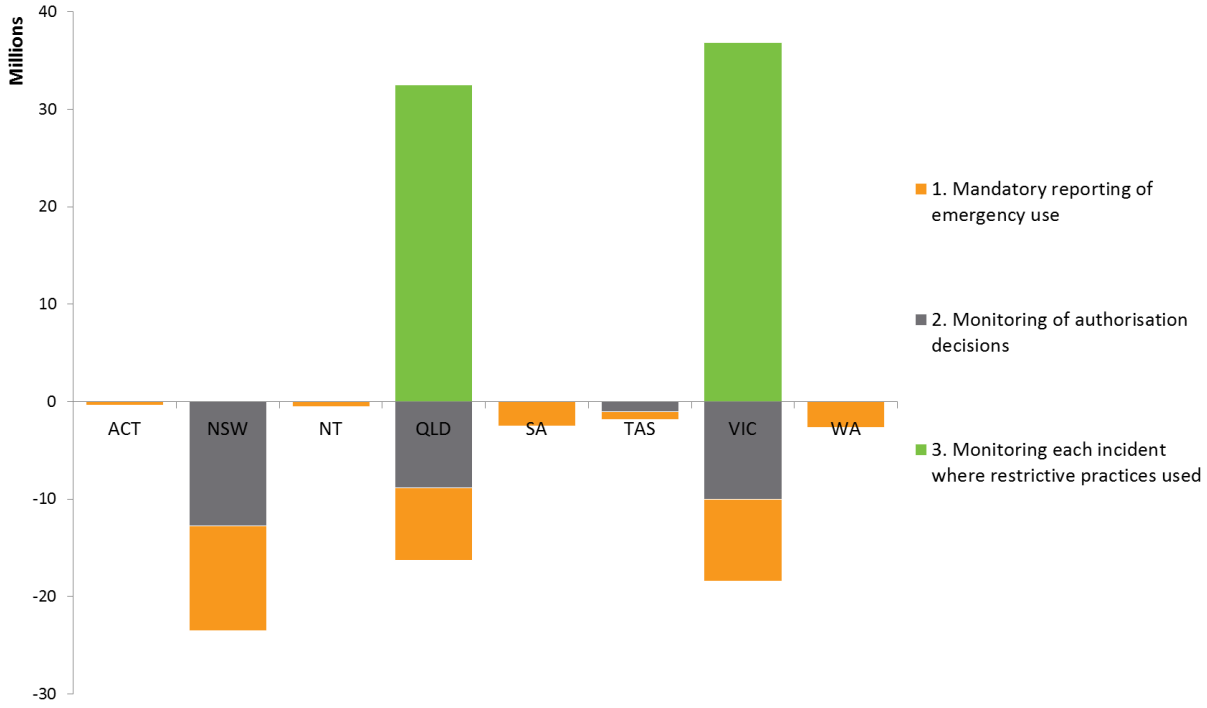
Base case

Table 53 sets out the base case analysis, broken down by jurisdiction and the individual options. The base case shows a varied use of options, with all jurisdictions imposing regulation similar to Option 1, but only to the extent of internal reporting of the emergency use of restrictive practices. (As discussed below, Option 1 also refers to external reporting of emergency use.) Victoria alone imposes regulation similar to Option 2 and, as such, the base case considers this option only very lightly. Three jurisdictions (NSW, Queensland and Victoria) have in place regulation similar to Option 3. The total NPV of the base case is -$3.12 million, which reflects the variations between significantly positive NPVs (for Queensland and Victoria) and generally negative NPVs (for the other States and Territories). See Figure 57.

Table 60: NPV base case for restrictive practices authorisation by options and jurisdiction ($ millions)

Jurisdiction	1. Mandatory reporting of emergency use	2. Monitoring of authorisation decisions	3. Monitoring each incident where RP is used	Total Base Case
ACT	-$0.38	-	-	-$0.38
NSW	-$10.75	-$12.75	-	-$23.5
NT	-$0.54	-	-	-$0.54
QLD	-$7.45	-$8.84	$32.52	$16.24
SA	-$2.53	-	-	-$2.53
TAS	-$0.84	-$1.00	-	-$1.85
VIC	-$8.44	-$10.02	$36.88	$18.42
WA	-$2.69			-$2.69
Total	-$33.62	-$32.61	$69.40	$3.17

Figure 57: Breakdown of base case NPV for restrictive practices monitoring, by options and jurisdiction



5.6.2 Analysis of options

Option 1 – Mandatory reporting only of emergency use of restrictive practices

Expert advice provided to Nous suggests that this option is likely to slightly reduce the use of restrictive practices. This will reduce injury to participants and staff, as research indicates that emergency use of restraints carries a far greater risk of injury than planned use of restraints.[137]

Jurisdictions that require emergency use of restrictive practices to be reported indicated to us that this allows them to monitor trends at a system-level. This in turn enables regulators to provide advice to individual service providers on how they can reduce their use of restrictive practices.

The reporting of emergency use of restrictive practices will not increase the compliance costs for providers, as all jurisdictions already require this reporting. However, overall compliance costs incurred by providers would reduce by $2.88 million per annum, if providers were only required to comply with Option 1, rather than additional options.

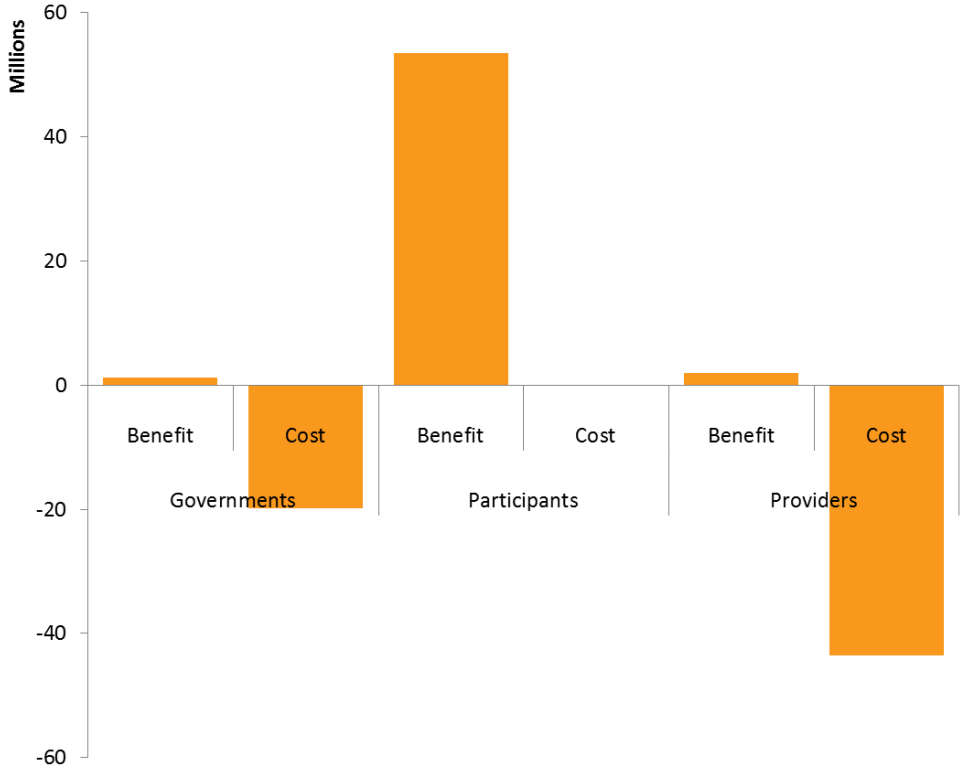
Additional costs are likely to be limited because i) use of restrictive practices is relatively low, and ii) some jurisdictions already require reporting of emergency use of restrictive practices.

[137] Emergency personal restraints result in injury 5.73% of the time and emergency mechanical restraints 3.60% of the time, whereas planned restraints result in injury 0.25% and 0.45% of the time for personal and mechanical restraints respectively: See Williams D (2007). *Restraint Safety: an Analysis of Injuries Related to Restraint of People with Intellectual Disabilities*, Journal of Applied Research in Intellectual Disabilities, vol. 22, pp. 135-139.

Distribution Analysis

Option 1 delivers an overall, negative NPV of -**$6.53 million**. The negative NPV occurs because of the combined costs to government ($19.86 million) and to providers ($43.65 million). Benefits flowing from reductions in unnecessary restrictive practices and other SAEs are insufficient to overcome these costs.

Figure 58: distribution of costs and benefits: Option 1 of restrictive practices monitoring



Sensitivity Analysis

Figure 59 sets out the results of sensitivity testing for Option 1. As it indicates, the findings for Option 1 are relatively weak, and Option 1 may deliver a positive NPV if its effectiveness on SAEs increases or if compliance are less than we estimate.

Sensitivity analyses for the discount rate and for market flux indicate comparatively little variation.

Figure 59: Sensitivity analysis: Option 1 of restrictive practices monitoring

Regulatory Burden Analysis

Table 61 sets out the results of regulatory burden calculations and cost offsets. The base case regulatory burden amounts to $3.19 million, while the regulatory burden associated with Option 1 is only $0.31 million. If governments were to replace the base case with Option 1 the reduction in regulatory burden would more than clearly offset the regulatory burden associated with the new intervention.

Table 61: Regulatory burden and cost offset estimate table: Option 1 of Restrictive Practices Monitoring

Average annual regulatory costs for Restrictive Practices - monitoring (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$0.3 million	nil	$0.3 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$3.2 million	$nil	$3.2 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

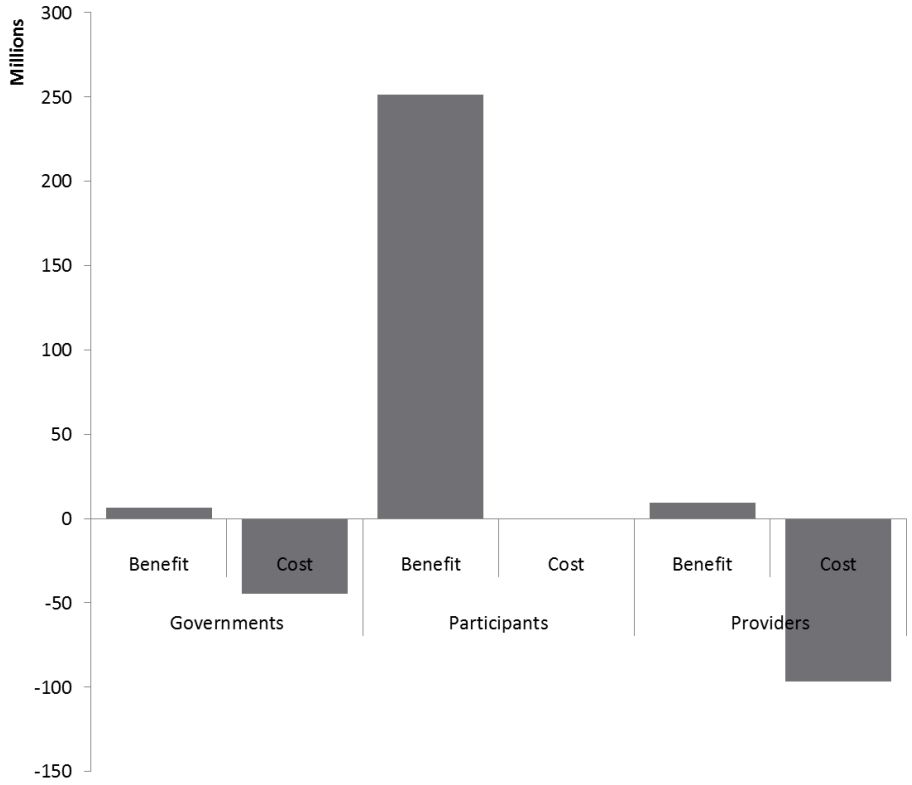
Option 2 – Notification of inclusion of restrictive practice in BSP

Where there is an expectation that providers will have a high quality BSP, there is likely to be a reduction in the use of restrictive practices.[138] Results from the provider survey indicate that 32% of respondents in jurisdictions with an Office of Senior Practitioner (or equivalent role) accessed external advice from the Senior Practitioner. Option 2 can therefore be expected to improve dialogue between providers and experts about the appropriate use of BSPs and restrictive practices, which in turn delivers benefits to the participant in particular.

Distribution Analysis

Modelling indicates that Option 2 will deliver a NPV of $125.8 million. Compared to Option 1, participant benefits under Option 2 increase by a factor of 5 (from $53 million to $251 million), while government and provider costs only increase by a factor of 2.2 (from a total of $63.5 million to a total of $141.63 million).

Figure 60: distribution of costs and benefits: Option 2 of restrictive practices monitoring

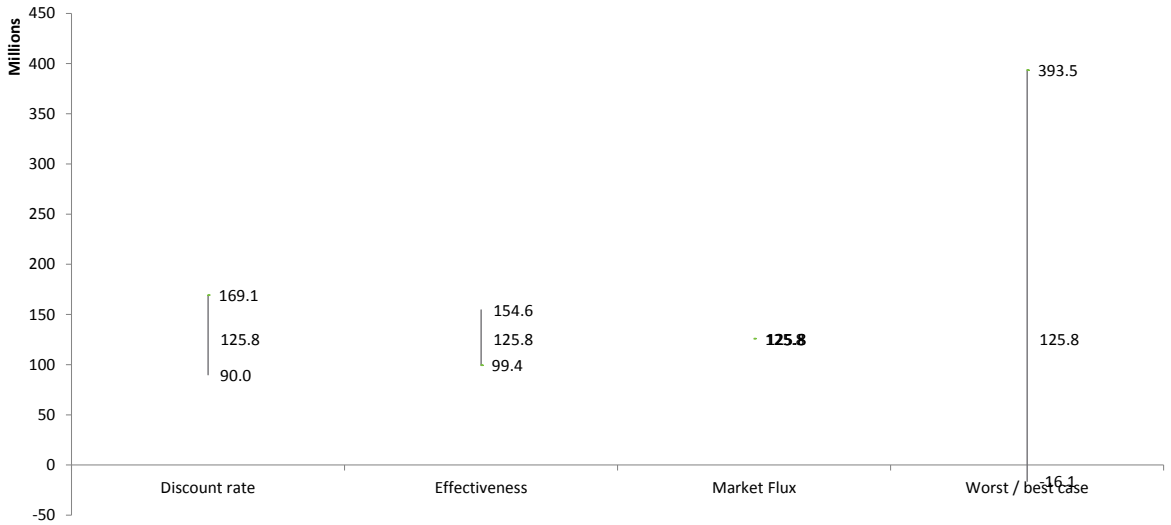


[138] Research has found that high quality behaviour support plans reduce the use of restrictive practices. Requiring notification of inclusion of restrictive practices in behaviour support plans also allows the regulator to provide support and advice on behaviour support plans. This can improve the quality of behaviour support plans and therefore lead to greater reductions in the use of restrictive practices. See Webber, L, Richardson, B, Lambrick, F & Fester, T (2012), *The impact of the quality of behaviour support plans on the use of restrain and seclusion in disability services*.

Sensitivity Analysis

Sensitivity testing indicates that the expectation that Option 2 will be positive is a robust one. Table 59 sets out the results of the testing. Option 2 delivers a positive value regardless of any variations in the relevant dimensions of sensitivity.

Figure 61: Sensitivity analysis: Option 2 of restrictive practices monitoring



Regulatory Burden Analysis

Regulatory burden analysis of Option 2 reveals a regulatory burden amounting to $2.34 million per year. The regulatory burden for the base case is $3.19 million, which would completely offset the regulatory burden that would follow if Option 2 were rolled out across Australia.

Table 62: Regulatory burden and cost offset estimate table: Option 2 of Restrictive Practices Monitoring

Average annual regulatory costs for Restrictive Practices (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$2.3 million	nil	$2.3 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$3.2 million	$nil	$3.2 million

Are all new costs offset?

✓ Yes, costs are offset ☐ No, costs are not offset ☐ Deregulatory—no offsets required

Option 3 – Reporting each occasion where restrictive practices are used

This option is likely to achieve the greatest reduction in the use of restrictive practices, as it requires providers to have robust monitoring within the service. Expert advice indicated that such monitoring is

likely to deliver a better overview of the circumstances in which restrictive practices are being used, which experts have stated will itself drive a reduction in restrictive practices.

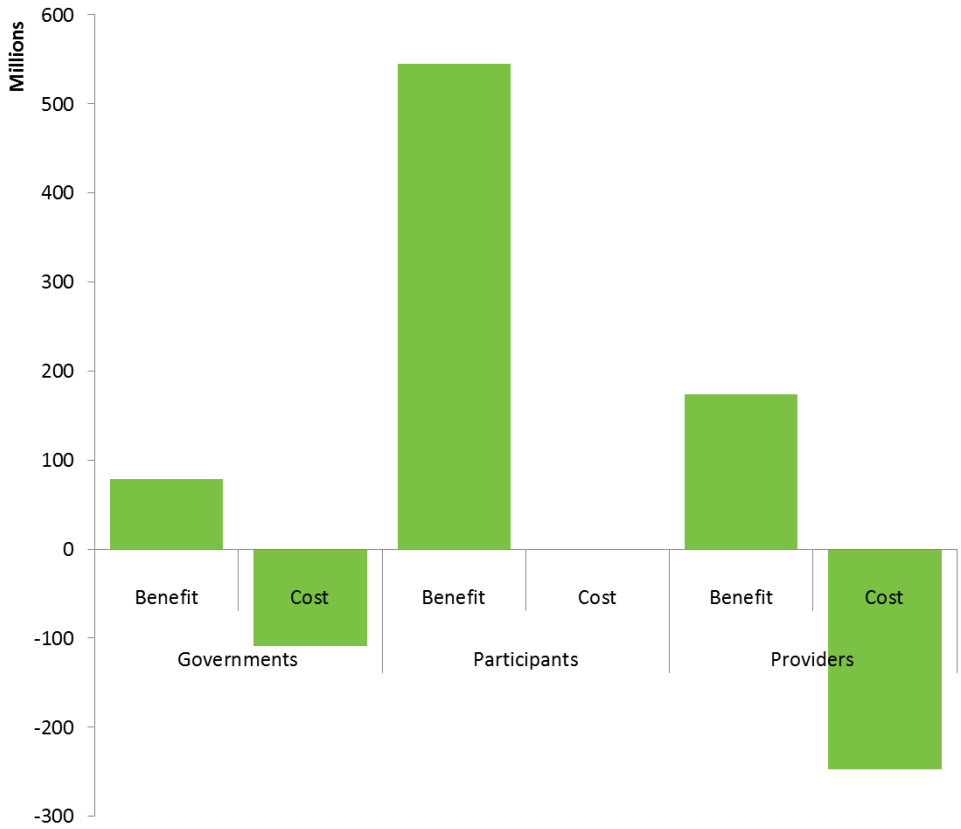
The reporting of emergency use of restrictive practices also allows government to monitor system-level trends and trends at an organisational level to determine if further action is required. Jurisdictions indicated that mandatory reporting of emergency use allows them to suggest alternatives for the future use of restrictive practices and referral to clinicians when required.

We have assumed for the purpose of modelling this Option the reporting regime will vary the level of reporting with the circumstances in which RP were used. In other words, there will be bulk reporting processes for use of RP that complies with the participant's BSP, but more intensive reporting for emergency use of restrictive practices. This option would nevertheless involve a significant increase in providers' compliance costs when compared to the other options. This increase in compliance costs might be at least partially, if not fully, offset by a reduction in compliance activities related to the more limited use of restrictive practices.

Distribution Analysis

Option 3 delivers a NPV of $441 million**.** The increase in NPV between Option 2 and Option 3 is due to a further doubling of the value of benefits that participants receive (from $252 million to $545 million) and to a significant increase in the value of benefits that providers receive (from $10 million to $174 million) and that government receives (from $7 million to $79 million). There are significant costs to governments and providers (amounting to almost $368 million), but the overall effect is that costs and benefits offset each other for both providers and government, and participants retain the benefits that they receive.

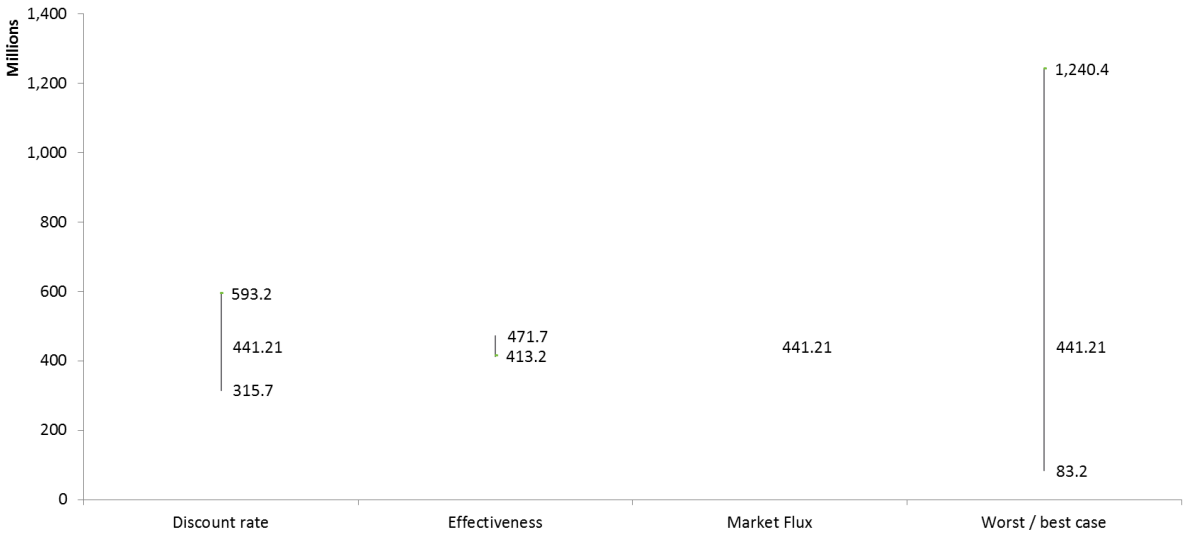
Figure 62: distribution of costs and benefits: Option 3 of restrictive practices monitoring



Sensitivity Analysis

Sensitivity analysis indicates little variation in the NPV of the CBA, even allowing for variation in dimensions of interest. The findings in relation to Option 3 should therefore be considered robust.

Figure 63: Sensitivity analysis: Option 3 of restrictive practices monitoring



Regulatory Burden Analysis

Regulatory burden analysis indicates that the regulatory burden of Option 3 ($6.41 million) roughly matches, and would therefore be offset by, the regulatory burden of the base case ($3.19 million).

Table 63: Regulatory burden and cost offset estimate: Option 3 of Restrictive Practices Monitoring

Average annual regulatory costs for Complaints and Oversight (from business as usual)			
Change in costs	**Business**	**Individuals**	**Total change in costs**
Total	$6.4 million	nil	$6.4 million
Cost offset	**Business**	**Individuals**	**Total, by source**
Agency	$3.2 million	$nil	$3.2 million

Are all new costs offset?

☐ Yes, costs are offset ✓ No, costs are not offset ☐ Deregulatory—no offsets required

5.6.3 Maximising the Net Present Value

Table 50 sets out the distribution of costs and benefits by options and stakeholder group.

Option 2 includes all the government intervention that Option 1 envisages; Option 3, in turn, includes all the government intervention that Option 2 envisages.[139] As such, governments can maximise the NPV that this element produces if they adopt Option 3. There are no possibilities for combination.

Table 64: Distribution of costs and benefits, option and by stakeholder group ($million)

		1. Mandatory reporting of emergency use	2. Monitoring of authorisation decisions	3. Monitoring each incident where RP is used
Governments	Benefit	$1.26	$6.49	$79.38
	Cost	$19.86	$44.96	$109.78
	Net	-$18.60	-$38.47	-$30.40
Participants	Benefit	$53.63	$251.79	$545.64
	Cost	0	0	0
	Net	$53.63	$251.79	$545.64
Providers	Benefit	$2.09	$9.44	$174.15
	Cost	$43.65	$96.97	$248.18
	Net	-$41.56	-$87.53	-$74.03
Total		**-$6.53**	**$125.79**	**$441.21**

5.6.4 Competition analysis

Table 65 sets out a summary of the competition analysis for the monitoring aspect of the restrictive practices element.

Table 65: Competition analysis – restrictive practices monitoring

Key LOE	Topic	Questions	Option 1	Option 2	Option 3
1. Does the option impact on business market entry and operations?	**Market entry**	Does the option impose regulatory barriers to market entry?			
		Does the option increase costs to market entry?			
	Provider operations	Does the option limit the ability of some types of providers to provide some services?			
2. Does the option restrict the	**Customer access to services**	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?			

[139] Consultation RIS, pp 84-85.

Key LOE	Topic	Questions	Option 1	Option 2	Option 3
competition process?		Does the option reduce providers' ability to adapt / innovate their service offer?	○	○	○
	Market information	Does the option limit providers' freedom to advertise or market their offer?	○	○	○
		Does the option limit providers' ability to set independent prices?	○	○	○
		Does the option limit the information available to consumers?	○	○	○
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?	○	○	○
3. Does the option generate a net social benefit?			Low	Medium	High

Key – Impact on competition

○ No impact | ◔ Minimal impact | ◑ Moderate impact | ◕ Signficant impact | ● Extreme impact

Market entry

Introduction of monitoring requirements do not introduce any significant regulatory barriers to entry. However, all providers will need to establish internal data collection arrangements that comply with national definitions and requirements. These arrangements increase in detail across options 1 to 3.

In relation to costs, providers will need to consider the resources required to manage the internal monitoring and reporting requirements. These costs are ongoing, and are not solely related to market entry.

Options 1 to 3 reflect increasing reporting requirements, with Option 1 requiring the least reporting (and hence lowest costs) and Option 3 the greatest.

Provider options

Providers operating services that may involve use of restrictive practices will need to demonstrate they have the appropriate reporting systems in place. However, any impact on providers' ability to deliver services is expected to be limited.

Option 1 will have the least impact for providers as information on emergency use is already collected in some form in each state and territory.

While options 2 and 3 will introduce additional reporting for some providers, these requirements will operate equally across all providers servicing participants where use of restrictive practices is required. They are therefore not expected to have a significant impact on the ability of some types of providers to deliver services.

Use of a nationally consistent reporting system is expected to reduce the administrative burden associated with this element. For example, it is suggested that for Option 3, data collection could occur through an online data portal.[140]

Competition process

This element does not limit providers' ability to innovate or adapt their service offer. No option in this element reduces providers' freedom to advertise or set independent prices.

Similarly, no option restricts the information available to participants, or impacts customer choice or ability to switch providers. Rather, this element increases the information available to participants in relation to the use of restrictive practices.

Social benefit

There is an important social objective in increasing accountability and transparency around the use of restrictive practices. Option 3 delivers the greatest benefits in this respect through the reduction in use of restrictive practices, access to support on advice on BSPs, and development of an evidence base for advice and policies on restrictive practices (see Section 1.4.4 above).

It would also allow for identification of systemic trends and individual cases where use is exceptionally high or continues over a prolonged period of time. This option would provide sufficient data to enable governments to monitor implementation of the Framework.

Option 3 is associated with higher compliance costs and increased impact on competition. However, this impact is appropriate with regard to the net benefits gained.

[140] Consultation Paper, p. 102.

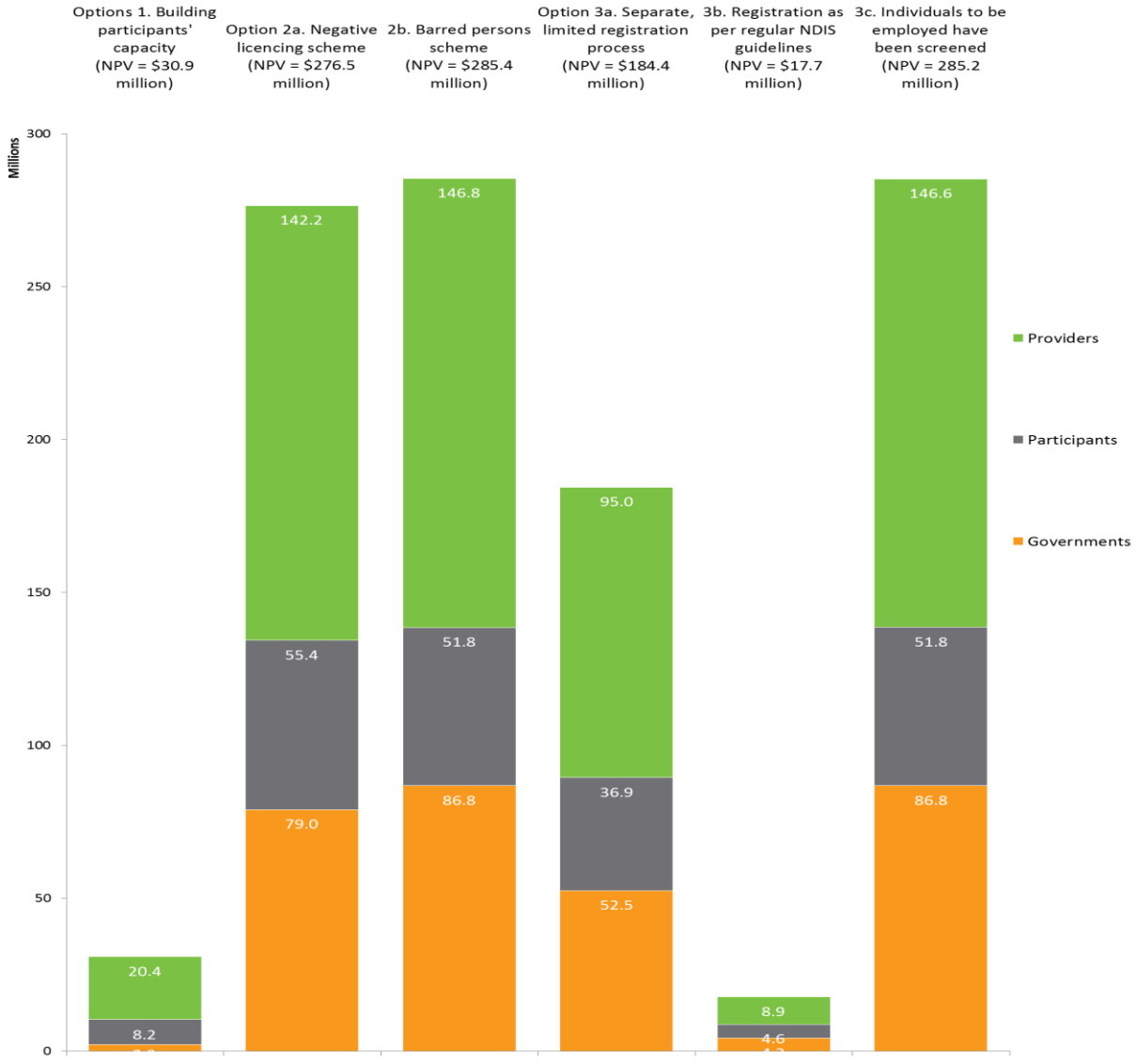
5.7 Self-managing participants

Summary

This is a new area of regulation and so there is no base case. The NPVs are all positive, however, so the absence of a regulatory offset should not be a concern (and the actual regulatory burden costs are small). The positive NPVs are more pronounced for Options 2a and 2b, 3a and 3c. These are the options with stronger safeguards to protect the interests of self-managing participants. Option 1, focussed on capacity-building, would bring benefits but the NPV is low because as a single option working in isolation, it does not substantively reduce the risk of adverse incidents. (Indeed they are expected to increase.)

Option 3b, which envisages a step in the process to register providers that allows for them to engage with self-managing participants, also delivers a relatively low (but still positive) NPV. This is Option 3b assists participants to achieve redress, which the CBA model counts as a negative.

Figure 64: Summary of NPV for self-managing participants element



5.7.1 Background

Some jurisdictions already provide options for people with disability to manage their own funding and have greater control over purchasing their own services. However, these packages have only been introduced relatively recently. Before agreeing to introduce the NDIS, some jurisdictions did not have specific regulation to support self-managing participants or govern the providers who supported them.

At the time of writing, an average of 4% of participants across all jurisdictions managed the purchasing of their own services.[141] The distribution of self-managing participants is set out in Table 66. These proportions are expected to rise in the future, but it is unclear how far.[142]

Table 66: Proportion of participants in trial sites who manage their own affairs, by jurisdiction[143]

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA
Self-managing Participants								
Proportion of participants using a combination of agency and self-management	37%	47%	8%	NR	19%	46%	28%	26%
Proportion of participants solely self-managing	13%	1%	0%	NR	12%	4%	0%	7%

Assumptions

The general assumptions for the overall cost benefit analysis are set out in Section 4. Nous makes four other assumptions relevant to the calculation of the NPV for this element:

- The final average proportion of participants who manage their affairs will stabilise at 6%.[144]
- Where an option in this element has an analogous option in another element (e.g. Option 2b in this element and Option 4 in Employee Vetting), COAG will not adopt the option in this element without also adopting the option in the other element. Calculations of cost in such options will amount to the marginal cost of supporting self-managing participants in this option, on top of the rest of the NDIS participants.
- The time that self-managing participants spend managing their affairs is not counted as a labour cost which needs to be considered for the purposes of this analysis.
- Costs to providers will be relatively small (compared to other elements) as they apply only to the small proportion of providers who serve only participants who manage their own funds. These providers also accrue benefits from the avoidance of incidents.

Base case

As this is a relatively new area of specific government regulation, there is no base case against which to compare the options that COAG is considering adopting.

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[141] NDIA (March 2015). *Quarterly Report to COAG Disability Reform Council*, p. 40.

[142] South Australia currently has the highest level of rollout, but that rate should be considered in light of South Australia's unusual distribution of people living with disability.
- 46% of participants in South Australia have the primary disability of Autism and Related Disorders (highest rate) compared to the national average of 30%.
- In SA only 3% of participants require support in living arrangements, compared to the national average of 24%.

[143] NDIA (March 2015). *Quarterly Report to COAG Disability Reform Council*, p. 40.

[144] Note this figure is based on the experience in trail sites to date. Given the inherent variation across states and the early stages of the NDIS, this figure could change.

5.7.2 Analysis of options

Option 1 – Capacity building

This option reflects the supports that some jurisdictions already provide to self-managing participants. This support is intended to build their capacity to implement their own safeguards and can empower participants to manage their own risks. If this option were implemented on its own, without other safeguards for self-managed participants, the rate of adverse incidents (particularly minor adverse incidents) is likely to increase.

Though many self-managed participants will implement effective safeguards, there is a significant risk that some self-managed participants will not be able to implement effective safeguards and will be at risk of harm.

The Consultation Paper explains the assistance that government would provide under Option 1 as follows:

> *… advice on how to interview for a worker, what they might do to document expectations to avoid disputes and misunderstandings, as well as other aspects of the employment process and responsibilities of being someone's employer. The NDIA could also facilitate access to police checks of potential employees.*

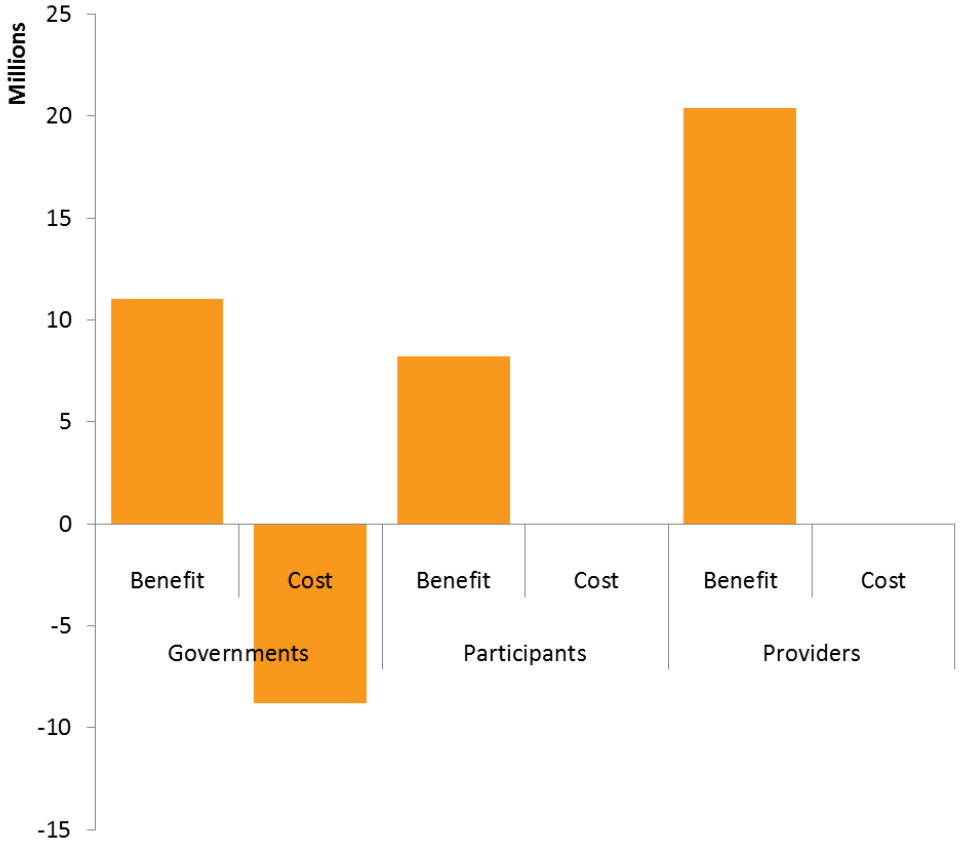
For the purposes of this analysis, Nous has assumed that one FTE advisor under Option 1 can deliver assistance to 350 self-managing participants.

Distribution Analysis

Option 1 delivers a NPV of **$22.1 million**. All stakeholder groups receive benefits under this option, primarily associated with improved redress for SAEs.

Government bears the main costs under this option: they are labour costs associated with directly training and supporting the self-managing participants (see Figure 65).

Figure 65: distribution of costs and benefits: Option 1 of self-managing participants

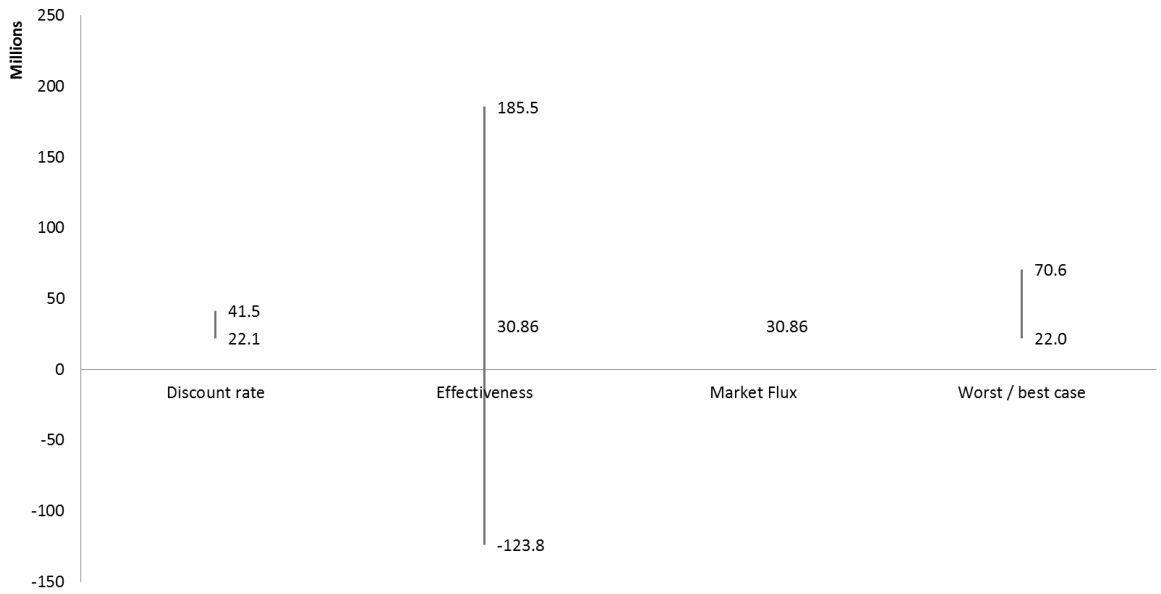


Sensitivity Analysis

Sensitivity analysis indicates that the NPV calculations are robust following testing using discount rate, market flux, and worst/best case analysis. See Figure 66. Effectiveness analysis indicates that the option is vulnerable to significant variations in SAE incidence.

The negative NPV finding therefore can be considered as comparatively robust.

Figure 66: Sensitivity analysis: Option 1 of self-managing participants



Regulatory Burden Analysis

The regulatory burden analysis of Option 1 indicates nominal regulatory burden, amounting to less than $50,000 per annum.

Option 2a and 2b – Negative licensing scheme / barred persons list

These options have the potential to reduce the risk of adverse incidents against self-managed participants. However, as noted above, research shows that the vast majority (up to 80%) of perpetrators of sexual abuse have no known history of offending.[145]

A barred person list has potential to vet out potential employees who do not have a criminal history but will only target those who have previously engaged in inappropriate behaviour. In addition, a barred persons list may infringe on the rights of potential employees. The check would identify people who had engaged in misconduct, but would not need to have been convicted of any crime.

A barred persons list would increase compliance costs for providers to self-managing participants. Victorian providers who responded to this question in the provider survey indicated that they took, on average, 30 minutes to enter people into the Disability Worker Exclusion Scheme list. However, the respondents generally indicated that they did so less than once per year. Self-managed participants would likely also face compliance costs.

Distribution Analysis

Option 2a delivers a NPV of $198.1 million; Option 2b delivers a NPV of $204.2 million. The distribution of costs and benefits for each option are virtually identical, which reflects the similarities in these options' direct effects (see Figure 67 and 68).

[145] Queensland Child Protection Commission of Inquiry (2013), *Child Protection Commission of Inquiry: Report.*

Figure 67: distribution of costs and benefits: Option 2a of self-managing participants

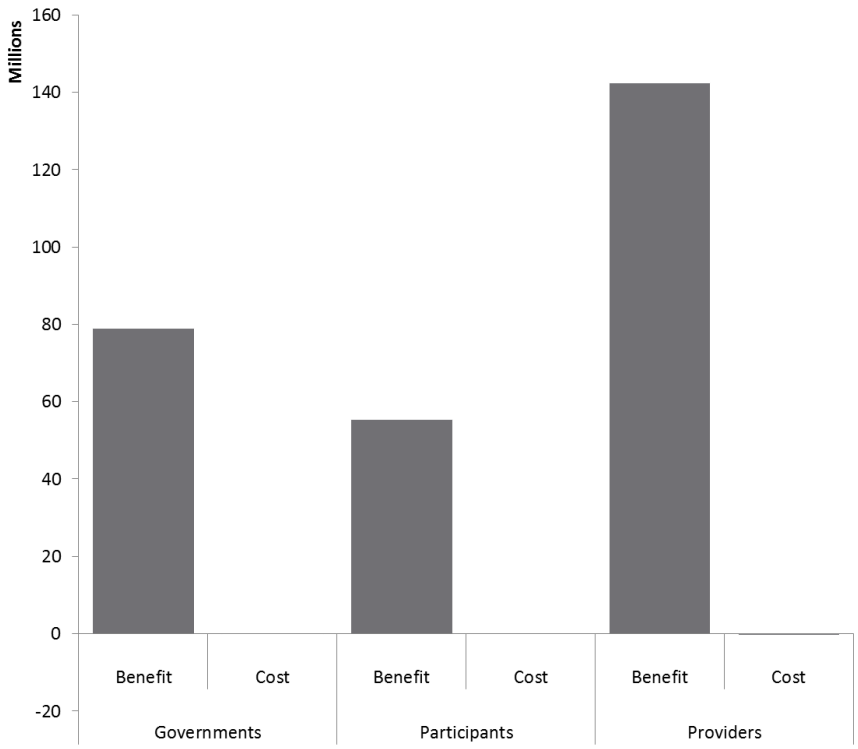
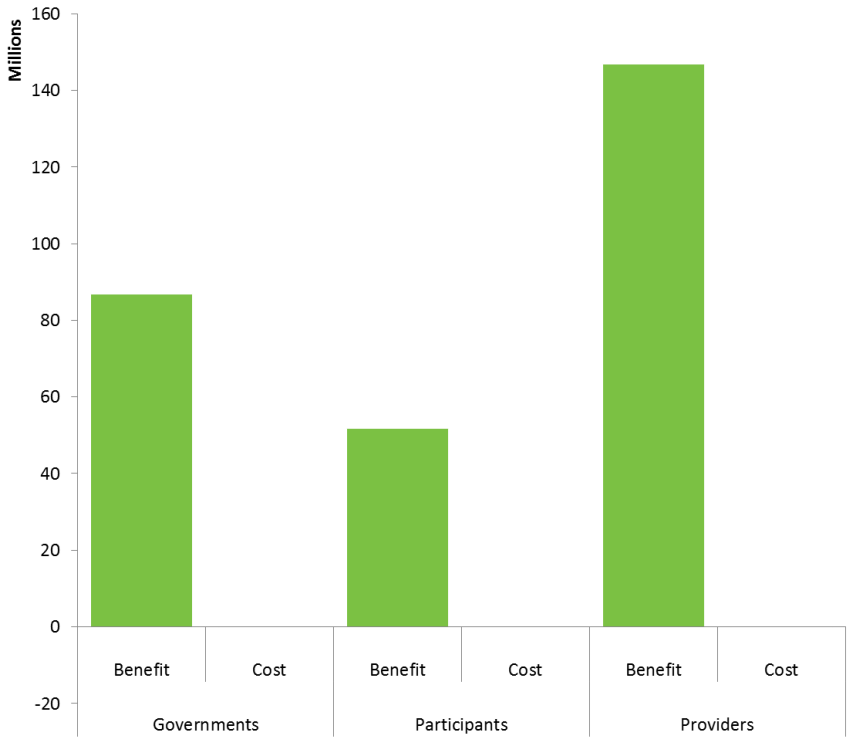


Figure 68: distribution of costs and benefits: Option 2b of self-managing participants



Sensitivity Analysis

Sensitivity analyses for both options indicate that the options retain a positive NPV for variations across all dimensions of sensitivity. The analysis therefore indicates that this is a robust result.

Figure 69: Sensitivity analysis: Option 2a of self-managing participants

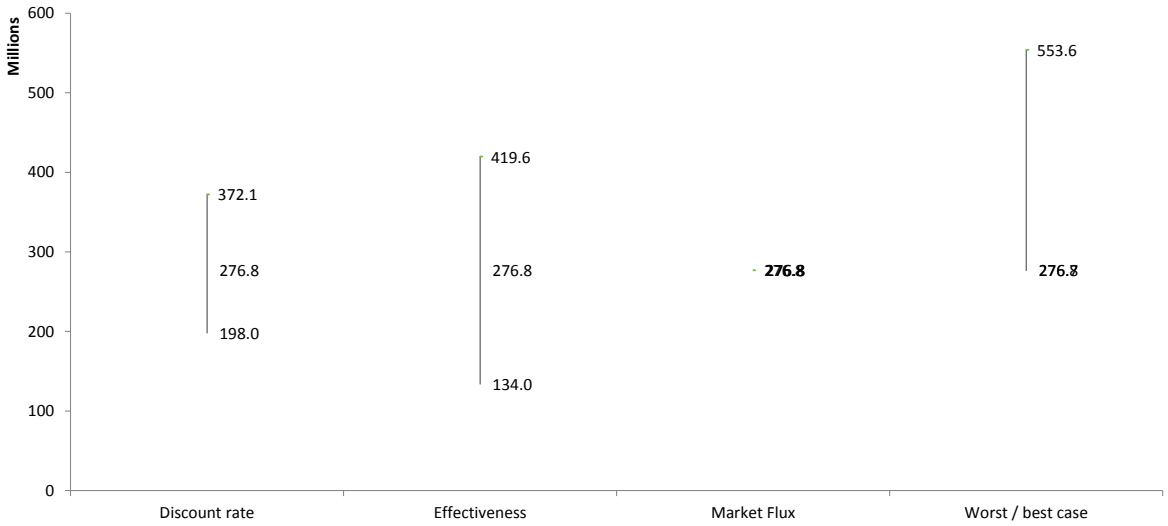
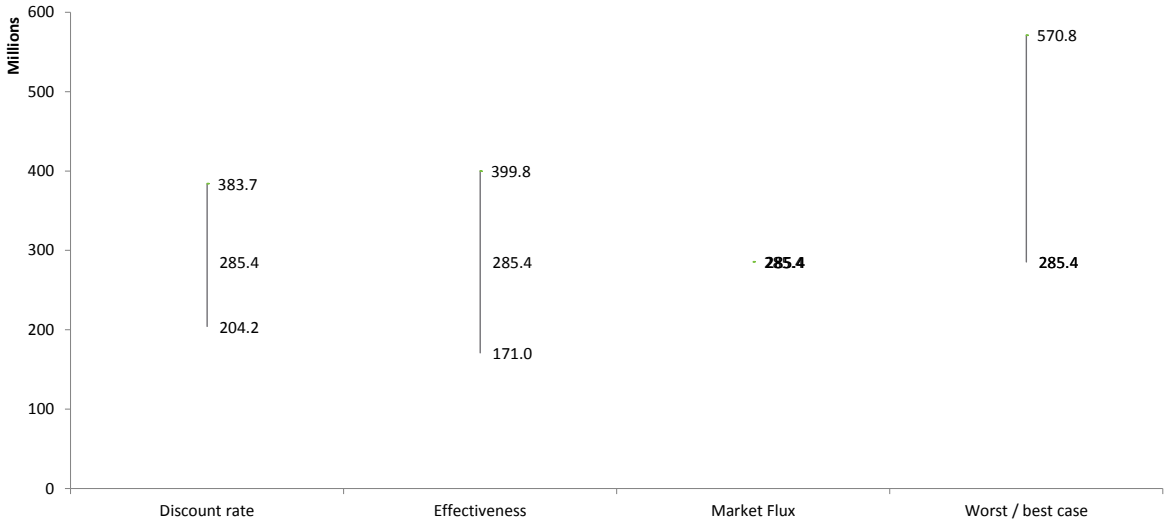


Figure 70: Sensitivity analysis: Option 2b of self-managing participants



Regulatory Burden Analysis

The regulatory burden analysis of Option 2 indicates nominal regulatory burden, amounting to less than $50,000 per annum.

Option 3a – Separate, limited registration process

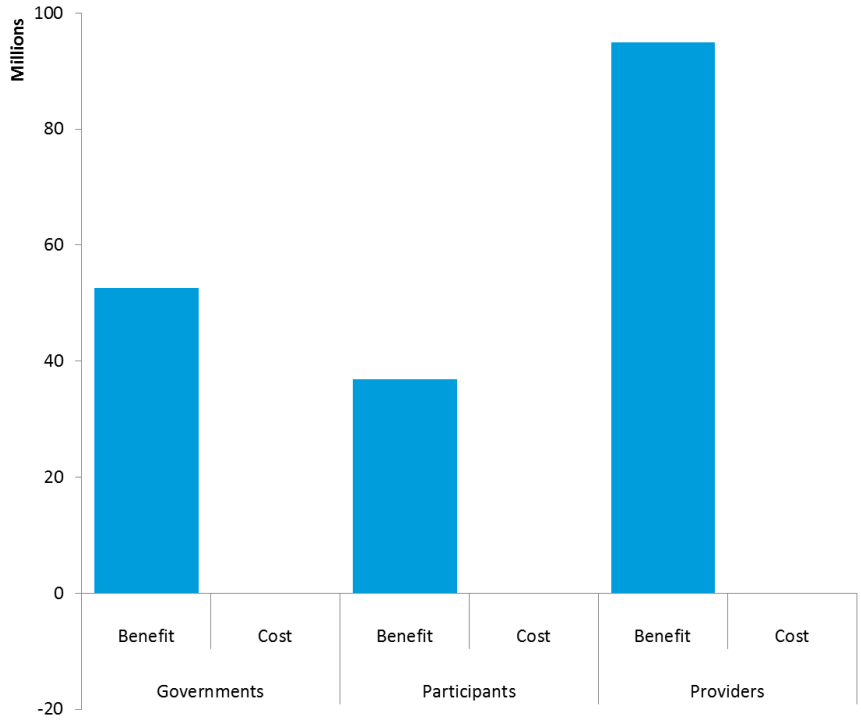
This option has limited potential to reduce the risk of adverse events.

In addition, providers who participate in the additional registration process will incur costs to providers of services to self-managed participants. This cost may act as a barrier and discourage services from working with self-managed participants.

Distribution Analysis

Option 3a delivers NPV of $132 million. Figure 71 sets out the distribution of costs and benefits for Option 3a. As discussed above, when the model calculates the costs for providers and government in this element, it is calculating the marginal costs for providers: the costs that providers incur when supporting self-managing participants that go beyond the costs providers incur when supporting participants generally. As such, any costs that exist are very small compared and can't be seen on the graph.[146] The small costs for governments and providers applies to Option 3a, Option 3b and Option 3c.

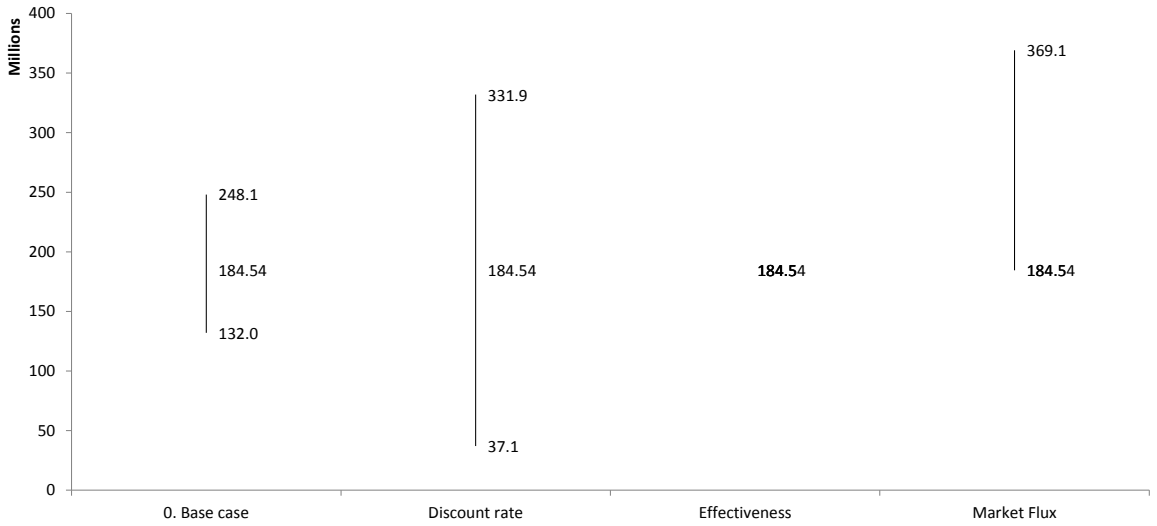
Figure 71: distribution of costs and benefits: Option 3a of self-managing participants



[146] See the discussion of assumptions at the commencement of this section.

Sensitivity Analysis

Figure 72: Sensitivity analysis: Option 3a of self-managing participants



Regulatory Burden Analysis

The regulatory burden analysis of Option 3a indicates nominal regulatory burden, amounting to less than $50,000 per annum.

Option 3b – Complete registration process

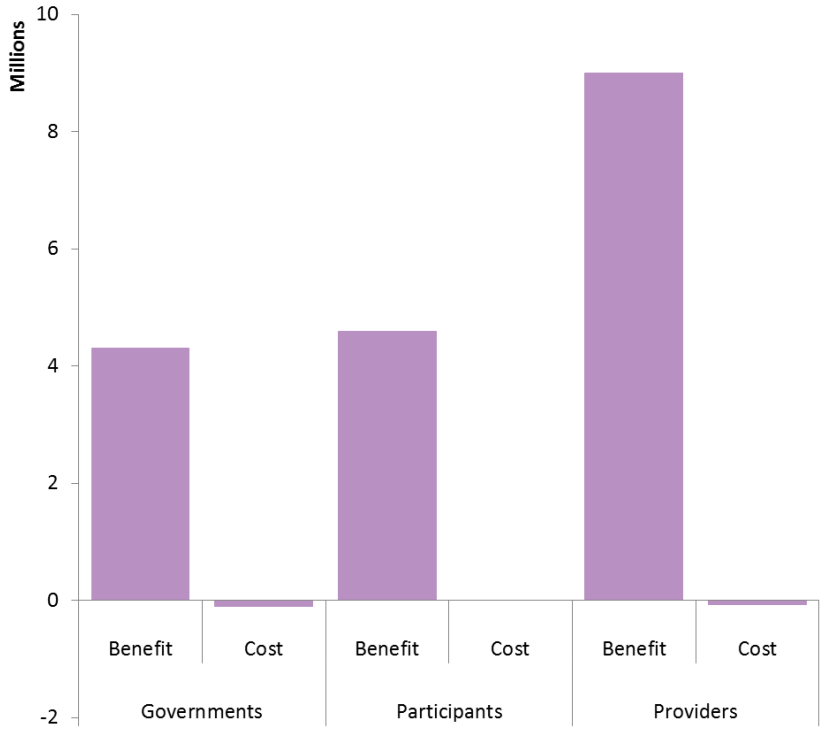
This option involves a more comprehensive registration process that is more likely to prevent inappropriate providers from entering the market and, thereby, reduce the risks faced by self-managed participants. Option 3b also increases participants' capacity to seek and obtain redress for SAEs (see Table 9 of Appendix E). The dynamic of quantification and monetisation, which was illustrated in the complaints element, plays an important role here. As the discussion in Section 5.2.1 indicates, redress acknowledges participants' dignity, but the CBA model counts redress as a cost, associated with investigation, litigation and compensation. The costs of redress diminish the NPV of Option 3b and leave a much lower NPV that would be expected if one were referring to the other options in this element.

On the other hand, by raising barriers to entry, this option could reduce the number of providers supporting self-managed participants, and therefore restricts self-managed participants' flexibility and choice.

Distribution Analysis

Option 3b produces an NPV of $12.8 million. It delivers benefits to government, participants and providers. Given the issues with redress discussed above, these benefits are all relatively low.

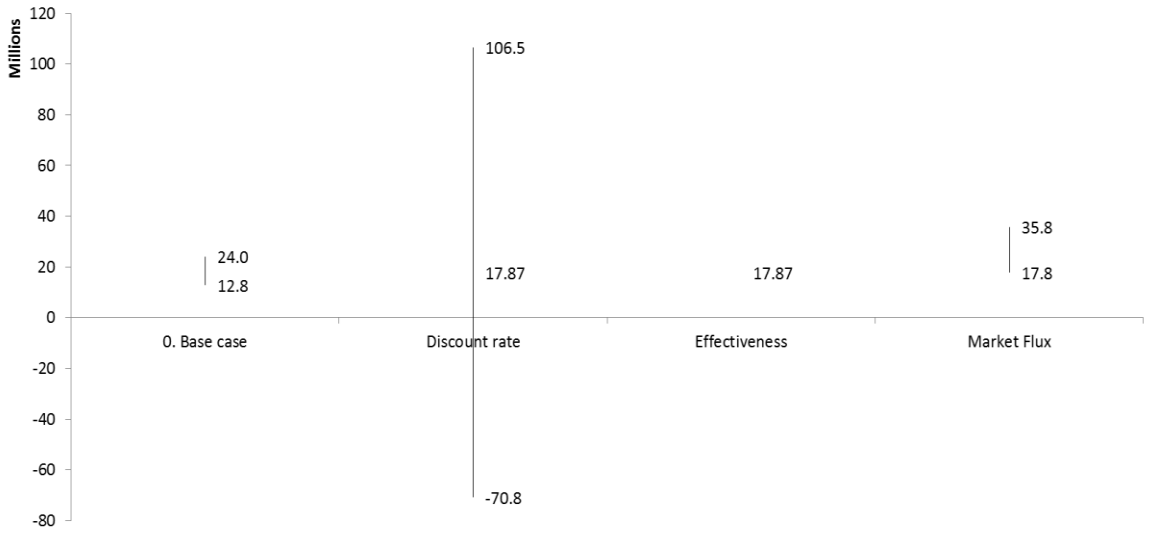
Figure 73: distribution of costs and benefits: Option 3b of self-managing participants



Sensitivity Analysis

Sensitivity analysis indicates that Option 3b is robust across three dimensions of sensitivity. Option 3's vulnerability to effectiveness analysis is a function of its low NPV.

Figure 74: Sensitivity analysis: Option 3b of self-managing participants



Regulatory Burden Analysis

Regulatory Burden Analysis of Option 1 indicates nominal regulatory burden, amounting to less than $50,000 per annum.

Option 3c – full screening of employees

This option would include a wider range of information than a police check and be similar to a WwVP Check. It would include non-conviction information, civil cases and work history. Therefore, it would minimise the risk of adverse events by potentially vetting out employees who do not have a criminal record but whose working history indicates a higher than usual high risk of offending.

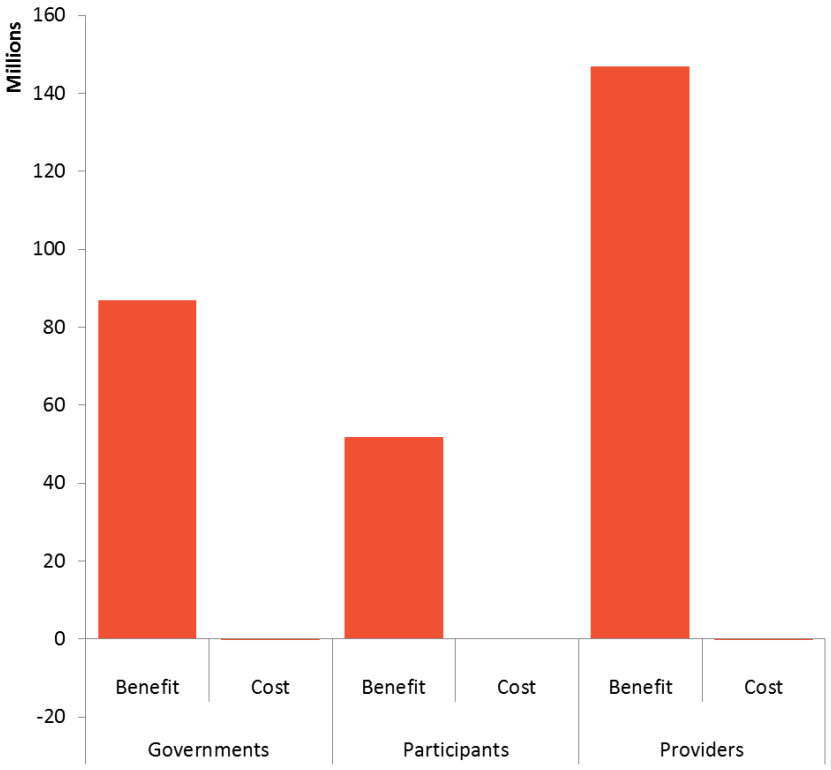
As described above, however, the expansion of vetting to include allegation that have not been proved in court risks infringing providers' and potential employees' rights to privacy and procedural fairness.

Full screening of employees of self-managing participants who increase the compliance costs for these participants. It may also involve increased costs in terms of delays to employment.

Distribution Analysis

Option 3c delivers a NPV of **$285 million**. All stakeholders receive benefits. See Figure 75.

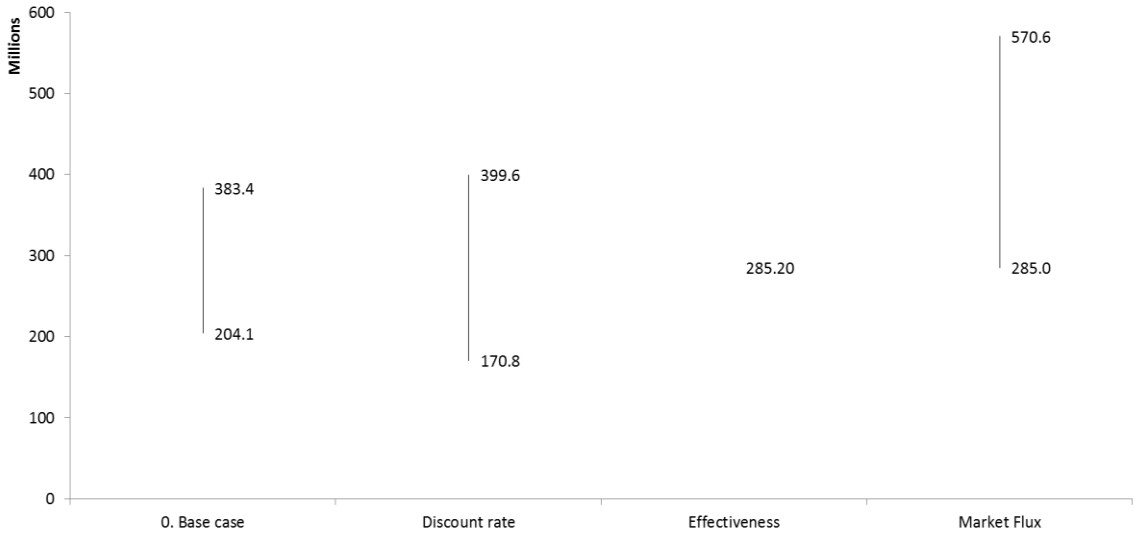
Figure 75: distribution of costs and benefits: Option 3c of self-managing participants



Sensitivity Analysis

Sensitivity analysis indicates that projections for Option 3c are robust, as it will continue to deliver a positive NPV despite variations across all the dimensions of sensitivity (see Figure 76).

Figure 76: Sensitivity analysis: Option 3c of self-managing participants



Regulatory Burden Analysis

Regulatory Burden Analysis of Option 1 indicates nominal regulatory burden, amounting to less than $50,000 per annum.

5.7.3 Maximising the Net Present Value

Table 67 sets out the distribution of costs and benefits. It indicates that government incurs the largest costs in this element for Option 1; these costs are related to the resource intensity of building participants' capability to manage their own plans.

Government also incurs the costs of implementing regulatory interventions under the other options, such as operating the barred person list and a separate registration process, but these costs are relatively small in magnitude as they only apply to the proportion of providers who serve only participants who manage their own funds.

Governments could choose to deploy Option 1, Option 2b and Option 3a at the same time. This combination yields a total NPV of $358.5 million, including total costs of $6.3 million, and total benefits of $364.8 million.

Table 67: Distribution of costs and benefits across each stakeholder group ($ million)

		1: Building participants' capacity	2a: Negative licensing scheme	2b: Barred persons scheme	3a: Separate but limited registration process	3b: Complete registration for all providers	3c: Full screening of all employees
Governments	Benefit	$7.9	$56.4	$62.1	$37.7	$3.1	$62.1
	Cost	$6.3	-	-	-	-	-
	Net	**$1.6**	**$56.4**	**$62.1**	**$37.7**	**$3.1**	**$62.1**
Providers	Benefit	$14.6	$102.0	$105.1	$68.0	$6.4	$105.1
	Cost		-	-	-	-	$0.2
	Net	**$14.6**	**$102.0**	**$105.1**	**$68.0**	**$6.4**	**$104.9**
Participants	Benefit	$5.9	$39.6	$37.1	$26.4	$3.3	$37.1
	Cost	-	-	-	-	-	-
	Net	**$5.9**	**$39.6**	**$37.1**	**$26.4**	**$3.3**	**$37.1**
Total		***$22.10***	***$198.00***	***$204.30***	***$132.10***	***$12.80***	***$204.10***

5.7.4 Competition analysis

The key comparative findings are outlined below. Table 68 provides a summary of the analysis across each option.

Table 68: Competition analysis – self-managed participants

Key LOE	Topic	Questions	Option 1	Option 2a	Option 2b	Option 3a	Option 3b	Option 3c
1. Does the option impact on business market entry and operations?	**Market entry**	Does the option impose regulatory barriers to market entry?	○	○	○	◐	◔	◐
		Does the option increase costs to market entry?	○	○	○	◐	◔	◐
	Provider operations	Does the option limit the ability of some types of providers to provide some services?	○	○	○	◐	◔	◔

Key LOE	Topic	Questions	Option 1	Option 2a	Option 2b	Option 3a	Option 3b	Option 3c
2. Does the option restrict the competition process?	Customer access to services	Does the option create a self-regulatory or co-regulatory regime that includes rules that reduce incentives for providers to compete?	○	○	○	○	○	○
		Does the option reduce providers' ability to adapt / innovate their service offer?	○	○	○	○	○	○
	Market information	Does the option limit providers' freedom to advertise or market their offer?	○	○	○	○	○	○
		Does the option limit providers' ability to set independent prices?	○	○	○	○	○	○
		Does the option limit the information available to consumers?	○	○	○	○	○	○
	Customer choice and switching	Does the option reduce the willingness, ability or incentive of customers to switch providers?	○	○	○	◐	◐	○
3. Does the option generate a net social benefit?			Low	Low	Low	Med	Med-High	Med

Key – Impact on competition

○ No impact ◔ Minimal impact ◐ Moderate impact ◕ Signficant impact ● Extreme impact

Market entry

Option 3b, which requires complete registration for all providers, introduces the highest regulatory barrier to entry for providers. All registration would be at the level required of providers delivering high risk services, regardless of the type of services that the particular provider delivers. This is likely to pose a significant barrier to entry for all providers, particularly those who are not providing high risk services. It may also be a disincentive for those providers who only intend to provide low risk services from entering the market.

Option 3a creates an additional barrier to entry for those providers delivering services to self-managing participants and who have not been registered through other provider registration systems, but the more limited registration means that the regulatory barrier is lower. Option 3c would require providers to screen employees and obtain individual employee clearances. However this is (comparatively) a far lesser burden than the provider level registration required in options 3a and 3b.

Options 1, 2a and 2b do not introduce any regulatory barriers to market entry. They impose no or low direct costs on providers. However, there would be additional costs associated with registration in Option 3a and 3b. It is assumed that the costs associated with complete registration would be higher

than those associated with partial registration under Option 3a. Obtaining employee clearances also has the potential to increase market entry costs to providers, although some providers might pass these costs on to prospective employees.

Provider operations

Without the relevant regulatory measures in place, providers will be excluded from delivering any services to self-managing participants. Options 1, 2a and 2b are unlikely to have any significant impact on providers' ability to deliver services to self-managed participants. Similarly, Option 3a imposes only a limited registration scheme. Option 3b is likely to have an impact some providers' ability to deliver services to self-managed participants, as the option will require all providers to meet the same registration conditions imposed by the NDIA for high risk providers in the Provider Registration element. This will create an additional administrative burden and may act as a disincentive for some providers to deliver supports to self-managed participants.

Option 3c requires full screening of employees. As Section 5.3.4 discusses, this option is likely to impact most on smaller providers that have less-established processes for obtaining employee checks and clearances. By comparison, larger providers often have specific arrangements with the police are able to obtain criminal record check more quickly. Similarly, the impact on competition of these options is likely to be higher for providers in regional and remote locations for whom it may take longer to process employee checks and hence cause delays in employment.

Competition process

The options proposed within this element are not expected to significantly impact on the competition process. This element does not limit providers' ability to innovate or adapt their service offer. No option reduces providers' freedom to advertise or set independent prices. Similarly, implementation of any option does not restrict the information available to consumers. Conversely, information made available under Option 2b (barred persons scheme) would increase the information available to participants. In relation to consumer choice and switching, options 3a and 3b do introduce a limitation as self-managed participants will only be able to access or to switch to certain registered providers.

Social benefit

There are many participants who would be able to manage the administrative and financial aspects of their own plan, but would be more willing to do so if they knew that there were some quality and safeguard measures in place. This element encourages participants to develop and exercise their freedom of choice, whilst ensuring a baseline level of safety and quality, and protecting particularly vulnerable people from risk of harm.

Each option within this element empowers self-managing participants to implement safeguards. With the exception of Option 1, each option will also reduce the risk of adverse events. The negative schemes in options 2a and 2b, and the more comprehensive registration process anticipated by Option 3b is anticipated to *significantly* reduce the risks of adverse events. Option 3b will introduce additional compliance costs for providers of services to self-managed participants, which may restrict competition. However, as for the provider registration element generally, the potential impact on competition impact is insufficient to undermine the net benefit that the option aims to achieve.