



Proposed NDIS Legislative Improvements & the Participant Service Guarantee

The Northern Territory Mental Health Coalition (the Coalition) is the peak body for community run mental health organisations (CMOs) in the Northern Territory (NT). The Coalition commends the Department of Social Services for their commitment to the National Disability Insurance Scheme (NDIS) and for upholding the promise to abolish independent assessments. The Coalition welcomes the opportunity to offer input into the proposed changes and trusts that this submission will be of helpful assistance. This submission is written with the understanding that the NDIS is a significant piece of reform and that mistakes will inevitably be made. With this in mind, the proposed legislative changes have been generally well received in the hope that improvements can be made to the NDIS. However, we keep in mind that it is the participants who are bearing the brunt of policies and practices.¹

To prepare for this submission, the Coalition elicited insights through consultations with our members and wider stakeholders on the proposed changes. However, four weeks for consultations is insufficient time to go through the vast documents, consult and contribute to such important reforms in a substantial way. Throughout our consultations we heard about the many aspects of the NDIS, but this submission is contained to the parts of the reform which affect psychosocial supports.

For further information or clarification, please contact Policy Officer, April Kailahi by phone on 08 8948 2246 or by email: policy@ntmhc.org.au

Schedule 1 (Participant Service Guarantee) or schedule 2 (Flexibility Measures)

Does the particular Schedule clearly set out the key changes being made to improve participant experiences with the NDIS?

¹ Gilchrist, D, J, P, A, Knight, C, A, Edmonds and T, J, Emery 2019, 'Six Years and Counting: The NDIS and the Australian Disability Services System - A White Paper, a Report of Not-for-profits', UWA, University of Western Australia, Crawley, Australia.

Throughout our consultations, we heard that there is a high level of concern with the power of the CEO. Schedule 1, Participant Service Guarantee (PSG), Exposure Draft, Section 47A allows a participant to request a plan variation, however the CEO can initiate a variation without the consent or consultation of the participant.

In section 48 of the Exposure Draft, it is written in a way that does not allow participants to ask for a reassessment. This contradicts the *Tune* review² which states that these changes will remove red tape and improve the participant experience.

Not allowing the participant to initiate their own reassessment or failing to consult with the participant and gain their consent on a plan variation, reassessment, or review, leads to a breach of trust and the perception that the NDIA does not have the participants best interests at play. This also goes against the principles of transparency, responsiveness, respect, empowerment and connectedness.

Schedule 2 articulates the need to strengthen the objects and principles of the Act and incorporate co-design, however there are scant details on what this will look like. Also, as stated above, the lack of time for the consultation was problematic and not conducive to the co-design methodology.

Consultations also heard concern over the proposed payments design. Participants should be able to choose from a variety of payment methods, depending on what best suits at the time. There is concern that the proposed 'tap-and-go' method will place unintended limits on which providers participants can use due to lack of technology. The Coalition recognises the need for mixed-methods payment systems, in line with the principles of choice and control, but also for remote and rural communities who have limited access to services and technology.

Recommendations:

- The Coalition recommends that participants are consulted on all aspects of their plan and that the drafting in Section 48 of the PSG be amended to allow participants to ask for a reassessment.
- The Coalition recommends that co-design be embedded in all aspects of the NDIS in a way that truly incorporates lived experience.

² 'Review Of The National Disability Insurance Scheme Act 2013', December 2019, David Tune AO PSM, Accessed October 2021 on URL: https://www.dss.gov.au/sites/default/files/documents/01_2020/ndis-act-review-final-accessibility-and-prepared-publishing1.pdf

- The Coalition recommends that a mixed-method payment system be available to all participants.

Schedule 3 (Full Scheme)

Does the Schedule clearly reflect the NDIS has moved into full scheme and is available across Australia?

For participants and providers of the NDIS, within the context of the Northern Territory, the Schedule does not reflect a full and available scheme. Our consultations revealed that it is not unheard of for NT participants to have to wait for eight months to see an Occupational Therapist (OT). The lack of coordination between the NDIA, Territory/State, Federal Government and relevant sectors has resulted in would-be participants falling through the cracks because of a fragmented system. An integrated whole of systems approach is needed if we are to rectify an ambiguous and disconnect system. This is the case for psychosocial supports where there is so much ambiguity as to who is responsible for what.

In 2011, the Productivity Commission released its report on the pre-existing government run system of disability care and supports. The report stated that the system was underfunded, fragmented and inefficient and that people with a disability had 'little choice and no certainty of access to appropriate supports'³. Presently, the NDIS is moving into a market economy where thin markets are prevalent, especially in rural and remote areas. These barriers are still precluding rural and remote people with disabilities from accessing services.

Research on rural and remote families with children on funded NDIS plans found that feelings of achievement at having successfully acquired a plan for their children were quickly abated due to the lack of supports. Furthermore, this has impacted negatively on the mental health and wellbeing of families who do not feel supported.⁴

For many families, engaging with the NDIS has created feelings of frustration, anger, stress, and anxiety, and caused additional stress on relationships and finances.⁵ The rural and remote NDIS

³ Productivity Commission 2011, Disability Care and Support, Report no. 54, Canberra (p.2)

⁴ Loadsman, J & Donnelly, M 2020, 'Exploring the wellbeing of Australian families engaging with the National Disability Insurance Scheme in rural and regional areas', *Disability & Society*, pp. 1-20.

⁵ *Ibid* (p. 14)



strategy was released in 2016 with goals that include: easy access and contact with the National Disability Insurance Agency (NDIA); effective, appropriate supports wherever people live; and support and strengthen local capacity of rural and remote communities.⁶

The correlating outputs involve: people in rural and remote communities being able to access the services of the NDIA in a way that works for them; that the range of choice and quality of disability supports available to a person in a rural or remote community is sustainable and as diverse as possible; and that the NDIS will deliver an economic and capacity building return to the local communities.⁷

Unfortunately, as noted above, we have seen that access to a range of quality services is still a barrier. Culturally appropriate supports are not accessible to Aboriginal people with a disability in the NT and the notion of ‘choice and control,’ a principle on which the NDIS was founded upon, has fallen flat. A market-based scheme, governed by a Western administrative approach is not specifically inclusive of culturally safe, rural, and remote supports.⁸

Recommendation:

- The Coalition recommends a whole of systems approach to evaluation so that we can assess the current state of services and their effects on social determinants.

Participant Service Guarantee Rules

Do the rules provide clarity to participants on the timeframes that will apply to NDIA decision-making?

The new participant timeframes are a welcomed addition to the proposed legislation changes. They provide much needed clarity and piece of mind for participants and providers.

⁶ National Disability Insurance Agency, Rural and Remote Strategy 2016-2019, <file:///C:/Users/NTMHC%20User/Downloads/PB%20Rural%20Remote%20Strategy%20PDF.pdf> (p. 5)

⁷ *ibid*

⁸ Gordon, T, et al. 2019, ‘Listen, learn, build, deliver? Aboriginal and Torres Strait Islander policy in the National Disability Insurance Scheme’, *The Australian journal of social issues*, vol. 54, no. 3, pp. 224–244.



Are the timeframes within which things must be done appropriate? Are they too long or too short?

During our consultations, the proposed timeframes were seen as very positive. Of course, in an ideal world the timeframes would be made even shorter, however our consultations acknowledged the capacity of the NDIA. Providers have been stymied by the long wait to vary a participant's plan and this has hindered the ability to provide their best service. As articulated by one of our members, when asking for a plan to be varied, something has happened in that participants life and this needs to be dealt with quickly so they can continue to get the best support.

Are the proposed engagement principles and service standards that will underpin how the NDIA works alongside people with disability in delivering the NDIS appropriate? Are there additional particular types of consultation or engagement important to consider?

The engagement principles of transparency, responsiveness, respect, empowerment, and connectedness must be translated through the Agency's interactions with participants. There needs to be clear guidelines which shows how these principles are manifest.

The Commonwealth Ombudsman will provide an annual report to Government on the NDIA's performance in delivering the Guarantee. The Rules set out what will be in that report. The Rules also set out the things that NDIA must report on in its quarterly report to Governments. Do the Rules clearly explain how both of those reports will ensure the NDIS delivers in the promises of the Guarantee?

Monitoring, evaluation, and reporting are key to the success of the NDIS as well as building trust between the agency and participants. Will the reporting be made public, and will there be added disincentives, other than reputation, if the agency does not meet their targets? There must be accountability for the NDIA, and this must be transparent. Throughout our consultations, it was apparent that there is a dearth of trust between people accessing or trying to access the scheme and the institution. This is especially evident after the independent assessment debate, which further articulates the need for consultation and transparency.

Recommendations:

- The Coalition recommends that a participant should be informed consistently in all matters of their plan. A participant should not have to request a copy of their draft, this should be automatic. Under the PSG Rules, the participant has the right to request their draft plan.
- The Coalition recommends that monitoring, evaluation, and reporting be transparent with reports released to the public. This is important so that organisations and providers can understand participants and workforce needs and respond accordingly.

Plan Administration Rules

Do the Rules clearly set out the circumstances in which a participant's plan can be varied, and the circumstances in which the NDIA would ordinarily first conduct a reassessment?

The Coalition welcomes the chance to cut red tape and allow greater transparency, however there are concerns which have been referred to previously. The Rules which are set out in accordance with the Participant Service Guarantee Exposure Draft shows that there does not seem to be a mechanism for the CEO to reassess a plan and leave it as is. As previously mentioned, there also seems to be a lack of participant consultation. If the CEO reassesses a plan before the reassessment date and finds that a variation is needed, this must be done in consultation with the participants.

Every effort should be made to consult with the participant. If the participant cannot be reached within a certain timeframe, then it may be reasonable for the CEO to vary the plan. However, as the CEO already has the power to reassess the plan, there should be no need for this lack of consultation or consent.

Further to the importance of consultations, the proposed s 100(1B) and (1C) of the Act, which allow a participant to request reasons for decisions made before an internal review is conducted, is a welcome move. However, the Coalition strongly urges that this procedure be automatic. All decisions should involve complete transparency. This is the methodology of a person-centred framework.



Do the Rules clearly explain the options a participant has to work with the NDIA to ensure their plan remains fit-for-purpose?

In order for the NDIS to be fit-for-purpose, there must be better inter-sector coordination, local level planning and clear channels of communication and information sharing. The scheme is not yet fit-for-purpose as it is not integrative. The NDIS needs to work with the whole system.

Does the proposed alternative commissioning power clearly set out the circumstances under which the NDIA could support a participant to maximise choice and control?

During our consultations, we heard from participants and carers who expressed frustration at their plan and the lack of choice and control. We heard stories from people who could not use their funding to access SDA, people who lost funding when they were not able to use it due to Covid restrictions and people who had funding but were not able to use it on their basic needs e.g., food, blankets etc. There is a concern that this new commissioning power may be used to hinder choice and control.

Recommendation

- The Coalition recommends that the participant be consulted in every aspect of their plan and that any information regarding decisions made should be automatically shared with a participant.

Plan Management Rules

Do the Rules clearly set out the circumstances in which a support must be specifically identified in a plan?

For participants in rural and remote communities and for Aboriginal participants, there should be a greater understanding of the scarcity of services and cultural aspects which hinder participation. A study conducted by the University of Melbourne measured the NDIS' Aboriginal and Torres Strait Islander Engagement Strategy principles. The study found that out of the thirteen engagement principles, none of them had been fully implemented. Specifically, if the 'supporting internal infrastructure' principle was on target organisational policies, procedures, systems, and practices



would be aligned with the 'proper way' engagement strategy. However, providers have highlighted the reduction of quality of supports for participants which are particularly problematic for ACCHOs.⁹

There have been previous calls to incorporate greater familial and communal roles of caring into the plans of Aboriginal participants. The Rules specifically name cultural safety as a way to intervene in the use of a particular provider, however, as a way to integrate cultural safety, the right to culture should be embedded within the Principles of Section 17A of the Act.

Do the Rules clearly set out the things the NDIA will consider in protecting participants from provider conflicts of interest and help them maximise the benefits of their NDIS funding?

Our consultations found that there is concern over the CEO having the authority to decide if a participant can use a particular provider. While we understand that protecting participants is paramount, for the context of the NT, there are not enough providers who specialise in psychosocial supports to rule a provider off the list. Our members have expressed concerns that participants do not have a lot of choices in a thin market and this Rule hinders choice and control. This Rule may result in adverse effects on an already struggling system.

The Rules set out the considerations taken into account when a participant or their representative request to self-manage their NDIS funding or use the support of a registered plan management provider. Is it clear how these considerations are designed to protect participants from unreasonable risk or harm?

The risk management framework is not clear in this instance. What are the criteria, and will this be made available? There needs to be a clear framework set out which is accessible for all participants.

Recommendations:

- The Coalition recommends an understanding that culture underpins and is integral to the safety and wellbeing of Aboriginal peoples and is embedded in policy and practice.

⁹ University of Melbourne, Understanding disability through the lens of Aboriginal and Torres Strait Islander people – challenges and opportunities, Centre for Health Policy, https://www.lowitja.org.au/content/Document/PDF/NDIS_Evaluation_M_Kelagher_v2.pdf



- While the need to protect participants is paramount, the NT has limited providers who offer psychosocial supports. The Coalition recommends that this should be taken into account when considering conflicts of interest.
- The Coalition recommends that a clear risk management framework be set out and accessible for all participants.

Becoming a Participant Rule

Do the Rules clearly set out the circumstances under which psychosocial disability may be considered permanent?

Notwithstanding the need for interpretable language, there are phrases in the Rules which need to either be better defined or require guidelines. Our consultations showed that the phrases ‘appropriate treatment’ and ‘substantial improvement’ have been noted as problematic; coupled with the fact that the CEO and delegate will have the power to decide what is deemed appropriate treatment and substantial improvement.

These amended Rules have not given way to the clarity sought and are especially troubling for the context of the Northern Territory, where the market is thin and cultural aspects must be accounted for. The lack of statistical information on Indigenous people with a disability is a major challenge to the implementation of the NDIS. Research has shown that the NDIS has not yet ‘thoroughly recognised cultural diversity nor has it addressed the barriers of Indigenous Australians to truly enable their entitlement to service equity and social inclusion’.¹⁰

It is still unclear how the new Rules will take into account the cultural understandings and safety of Aboriginal people with psychosocial disability. Who will be making decisions on culturally appropriate treatment and where does the intersection of determinants, which are unequally experienced by Aboriginal participants, come into play?

¹⁰ Phuong, D, L. 2017, ‘How well does the Australian National Disability Insurance Scheme respond to the issues challenging Indigenous people with disability?’ *Aotearoa New Zealand social work*, vol. 29, no. 4, pp. 49–60.



Do the Rules clearly set out when an impairment attributable to a psychosocial disability may be considered to result in substantially reduced functional capacity of the person to undertake an activity in communication, social interaction, learning, mobility, self-care, and/or self-management?

While there is a general sense of elation of amendments to the Rules, there still seems to be many obstacles in the way of becoming a participant through a psychosocial disability. There is a lack of understanding of the interrelated determinants experienced by people with ongoing, fluctuating psychosocial disability. There is still much uncertainty around who is responsible for those who are not eligible to access the Scheme and the boundaries between services provided by the health system and the NDIS.¹¹ As mentioned previously, for the NDIS to become fit-for-purpose, there must be a whole of systems approach and better coordination between the NDIA, State/Territory and Federal Governments.

With the understanding that legislation needs to be drafted in a way that is interpretable, our consultations revealed high concerns over the higher level of ambiguity than is normally expected. While this may be a positive, there is also a chance that interpretation could lead to negative outcomes for participants who already find it difficult to navigate such a complex system.

It is unclear how the Rules regarding psychosocial fluctuations interact with the notion of the recovery model and the impending recovery framework. Also, will these new Rules acknowledge the complexity of psychosocial disabilities and allocate the appropriate funding? Our consultations revealed that there is not enough funding for the complexities of psychosocial disabilities.

Recommendations:

- The Coalition recommends better procedural clarity for people with a psychosocial disability seeking to become a participant.
- The Coalition recommends a whole of systems approach to better understand and integrate cultural safety and social determinants which affect participants with a psychosocial disability.

¹¹ Williams, T, M, & Smith, G. P, 2014, 'Can the National Disability Insurance Scheme work for mental health?', *Australian and New Zealand journal of psychiatry*, vol. 48, no. 5, pp. 391–394.