

Submission to the Review of the National Disability Insurance Scheme (NDIS) Act and the new NDIS Participant Service Guarantee

Introduction

Mental Health Australia, Community Mental Health Australia and the Mental Illness Fellowship of Australia welcome the Government's intention to review the National Disability Insurance Scheme (NDIS) legislation and develop a NDIS Participant Service Guarantee. The mental health sector has advocated for, and worked with the National Disability Insurance Agency (NDIA) on, an improved experience of the Scheme for people with psychosocial disability since its introduction.

However, we anticipate the Participant Service Guarantee, as proposed in the discussion paper, will not be able to be realised without changes to the legislation, rules and practices of the NDIS and NDIA. This submission proposes such changes designed to assist the NDIA to realise its proposed Participant Service Guarantee, clarify the original policy intent of the NDIS and align it more closely with recovery-oriented practice. None of the proposed changes are intended in any way to widen the scope of the Scheme.

NDIS Legislation and Rules

Since introduction of the NDIS Legislation and Rules, the mental health sector has raised concerns about the use of the term 'permanent' to describe an impairment related to a psychiatric condition (see Section 24 of the *National Disability Insurance Scheme Act 2013*). This terminology is opposed to recovery-oriented practice,¹ widely accepted as good practice in psychosocial disability work.

Despite this advice, an Independent Review of the NDIS Act by Ernst and Young in 2015,² concluded the need for an impairment to be permanent in the context of mental illness should not be changed, because changing this language could potentially widen the scope of the Scheme. Ernst and Young found the legislative framework already accommodated some of the sector's concerns around allowing for fluctuating impairments and the evidence at the time didn't indicate this aspect of the legislation had an impact on Scheme participation by people with psychosocial disability.

¹ The National Framework for Recovery-Oriented services states that recovery-oriented practice "refers to the application of sets of capabilities that support people to recognise and take responsibility for their own recovery and wellbeing and to define their goals wishes and aspirations." (p15)

² Ernst & Young (2015) Independent review of the NDIS Act

In practice Government has shown some good intention to adjust the operation of the Scheme, within current legislative restrictions, to more closely align it with recovery-oriented practices. For example the Council of Australian Governments (COAG) Disability Reform Council recently announced the “establishment of a Psychosocial Disability Recovery Framework, with a strong focus on recovery and supporting episodic needs...”³ The NDIA has also established a working group with Mental Health Australia focussing on how to improve the experience of the Scheme for people with psychosocial disability, outlined in more detail below.

However, feedback from service providers suggests the permanency provision remains incompatible with recovery-oriented practice as this requirement in the legislation flows into practice within the NDIA. For example, the NDIS (Becoming a Participant) Rules state that NDIS applicants with disability are required to prove that there are “no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.” While this measure of permanency may be adequate for some other disabilities, it does not recognise that people with mental illness will receive ongoing clinical, medical and other treatments and psychosocial services to aid their recovery, potentially (sometimes episodically) over the course of their lives. It fundamentally fails to acknowledge the episodic nature of psychosocial disability.

To resolve this issue, in 2017, Mental Health Australia, Community Mental Health Australia and the Mental Illness Fellowship of Australia provided advice to the Parliamentary Joint Standing Committee on the National Disability Insurance Scheme, including suggestions for changes to both the NDIS Act and the Rules. The key elements of this submission relevant to the current NDIS Legislation Review are:

- NDIS Act section 24:
 - replacing the word ‘permanent’ with ‘ongoing, enduring or chronic’
 - replacing references to ‘psychiatric condition’ with ‘psychosocial disability’
- NDIS (Becoming a Participant) Rules:
 - Stating that rule 5.4 (which requires proof that all treatments that would be likely to remedy the impairment had been explored) does not apply to psychosocial disability
- NDIS (Supports for Participants) Rules:
 - Recognising that a recovery-oriented approach will be taken by the NDIA in determining support needs for people with psychosocial disability.

The full submission is at Attachment A for reference.

In response, the Parliamentary Joint Standing Committee on the National Disability Insurance Scheme recommended:

³ COAG Disability Reform Council (2019) Meeting of the COAG Disability Reform Council, Sydney – 9 October 2019, (p1)

- that the NDIS Act is reviewed to assess the permanency provisions in Section 24 (1) (b) and the appropriateness of the reference to 'psychiatric condition' in 24 (1) (a)
- a review of the NDIS (Becoming a Participant) Rules 2016 be considered to assess the appropriateness and effectiveness of clarifying that Rule 5.4 which dictates that a condition is, or is likely to be permanent, does not apply to psychosocial disability, to reflect that people with mental health conditions will receive ongoing treatments to aid recovery.

Mental Health Australia, Community Mental Health Australia and the Mental Illness Fellowship of Australia continue to support the Parliamentary Joint Standing Committee's recommendations. We welcome the opportunity presented by the current NDIS Legislation Review for further assessment of these recommendations.

Recommendation

The Australian Government:

- revises Section 24 (1) (a) and (b) of the *National Disability Insurance Scheme Act 2013*, in consultation with key stakeholders across the mental health sector to better align these sections with recovery-oriented practice
- makes changes to the NDIS (Becoming a Participant) Rules 2016, Rule 5.4 so that it does not apply to people with psychosocial disability
- includes reference to recovery-oriented supports in the NDIS (Supports for Participants) rules 2013.

Participant Service Guarantee

As noted above, the mental health sector has advocated for, and worked with the NDIA on, an improved experience of the Scheme for people with psychosocial disability since its introduction. Mental Health Australia, Community Mental Health Australia and the Mental Illness Fellowship of Australia therefore support the Government's intention to formalise a NDIS Participant Service Guarantee. This will provide an opportunity for consumers and carers to understand what they have a right to expect of service provided through the Scheme. It will also provide an objective measure, against which to guide service provided by NDIA and partner staff.

However, as the Scheme currently stands, the NDIA will have difficulty in realising the Participant Service Guarantee for people with psychosocial disability. In order to do this, the NDIA will need to fundamentally change the way the Scheme is operationalised for people with psychosocial disability.

The NDIA has already made significant inroads on this work through engaging Mental Health Australia in 2018 to run consultations in relation to the design of an NDIS Psychosocial Pathway. This was in response to significant and varied

concerns raised by the mental health sector in relation to the response of the Scheme toward people with psychosocial disability.

Mental Health Australia's consultations resulted in the provision of 29 recommendations to the NDIA in the form of Mental Health Australia's National Disability Insurance Scheme Psychosocial Disability Pathway Report (see Attachment B for the full report). Key recommendations included:

- improvements to assist people with psychosocial disability to access the Scheme including assertive outreach, personalised NDIS engagement support and better communications
- improvements to the skills, knowledge and experience of NDIA and partner staff to work with people with psychosocial disability
- creating better linkages and referral for people who are ineligible for the Scheme.

In October 2018, the Minister for Families and Social Services announced that the NDIA would establish a psychosocial stream for the NDIS including:

- staff with specialist skills who understand psychosocial disability
- better linkages between mental health services and NDIA staff and partners
- a focus on recovery-based planning and episodic needs.

The NDIA subsequently established a NDIS Psychosocial Stream working group with mental health sector stakeholders to work through Mental Health Australia's recommendations paying particular attention to:

- supporting people with psychosocial disability to prepare to access the Scheme
- responding to the episodic nature of psychosocial disability
- creating better linkages and referral for those who are ineligible for the Scheme.

The NDIS Psychosocial Stream working group's advice has been provided to the NDIA. Subsequently, the COAG Disability Reform Council has announced a range of initiatives designed to improve the experience of the Scheme for people with psychosocial disability as well as managing the interface with mainstream services.⁴

Each of the reforms outlined above will be an integral component underpinning the success of the NDIA, or otherwise, in realising its proposed Participant Service Guarantee in practice for people with psychosocial disability. With effective collaboration having been undertaken through the NDIS Psychosocial Stream working group, and robust advice having been received by Government, we are now at a critical juncture to ensure change is implemented. Accordingly, it will be important for both the COAG Disability Reform Council and the NDIA to enact swift and comprehensive communications campaigns about the specific changes they intend to make in order to improve the experience of the Scheme for people with

⁴ See the Council of Australian Governments Disability Reform Council Communique of 9 October 2019.

psychosocial disability, including the timeframes over which these changes will be implemented.

Recommendations

In order to realise the proposed Participant Service Guarantee:

- the NDIA should:
 - continue to work collaboratively with the sector to improve the experience of the Scheme for people with psychosocial disability
 - embark on detailed communications with the sector about its plans to improve the experience of the Scheme for people with psychosocial disability, based on its recent work with the NDIS Psychosocial Stream working group.
- the COAG Disability Reform Council should publicly release a detailed implementation plan in relation to the work program it has proposed in its communique of 9 October 2019.

Conclusion

The recommendations outlined in this submission are intended to assist the NDIA to realise its proposed Participant Service Guarantee, clarify the original policy intent of the NDIS and align it more closely with recovery-oriented practice. The recommendations are not intended, in any way, to widen the scope of the Scheme.

It is clear that NDIS is on the cusp of exciting changes, which should improve Scheme effectiveness and experience for people with psychosocial disability. It is important this momentum is seized by governments and the advice developed by or in collaboration with the sector is acted on. This should include changes to the legislation, rules and operations of the NDIS and NDIA as outlined above. These actions will underpin the NDIA's success in realising the proposed Participant Service Guarantee.



**Mental Health
Australia**

About Mental Health Australia

Mental Health Australia is the peak, national non-government organisation representing and promoting the interests of the Australian mental health sector and committed to achieving better mental health for all Australians. Mental Health Australia members include national organisations representing consumers, carers, special needs groups, clinical service providers, public and private mental health service providers, researchers and state/territory community mental health peak bodies.

About Community Mental Health Australia

Community Mental Health Australia (CMHA) is a coalition of the eight state and territory peak mental health organisations. Through them CMHA has a direct link and provides a unified voice for several hundred nongovernment organisations who work with mental health consumers and carers across the nation.

About the Mental Illness Fellowship of Australia

Mental Illness Fellowship of Australia (MIFA) is a federation of long-standing member organisations, established in 1986. Our members deliver specialist services for individuals living with severe mental ill-health and their carers, friends and families, out of nearly 60 'front doors' in metropolitan and regional areas, to over 20,000 people each year. Our membership has a strong focus on building community, valuing peer support and lived experience, and supporting recovery.