mhcc
mental health coordinating council

PO Box 668 Rozelle NSW 2039
T 02 9555 8388
F 02 9810 8145
E info@mhcc.org.au
W www.mhcc.org.au

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Commonwealth Department of Social Services
PO Box 7576
Canberra Business Centre
ACT 2610
Email: NDISqualitysafeguards@dss.gov.au

MHCC Submission in Response to Department of Social Services
National Disability Insurance Scheme Quality and Safeguarding Framework

The Mental Health Coordinating Council (MHCC) is the peak body representing community sector organisations supporting people affected by mental health conditions in NSW. Since 2011, we have undertaken work in relation to the inclusion of people with mental health conditions within the National Disability Inclusion Scheme (NDIS) in NSW. In 2013 we partnered with the Mental Health Commission of NSW to further our work in this context. Aspects of our work as this relates to quality and safety issues within the Hunter trial site are summarised in Attachment 1 and further elaborated upon in this submission.

MHCC thanks the Commonwealth Department of Social Services (DSS) for the opportunity to provide this submission. The DSS commenced a consultation process related to development of a national quality and safeguarding framework in March 2015 and interested people are asked to comment in response to a range of questions across the following eight areas:

- NDIS quality and safeguarding
- Building participants' capacity
- Monitoring and oversight
- NDIA provider registration
- Systems for handling complaints
- Ensuring staff are safe to work with participants
- Safeguards for participants who manage their own plans
- Reducing and eliminating restrictive practices in NDIS funded supports.

In this submission, MHCC provides brief comments in response to each of these areas. Our intent here is to highlight key positions and issues from a NSW community managed mental health sector perspective.

This submission is also informed by the findings of a consultation session regarding the NDIS Quality and Safety Consultation Framework, held with Hunter NDIS and Mental Health Community of Practice Forum on 17 March (see also Attachment 2).

NDIS quality and safeguarding

The establishment of a national quality and safeguards framework is critical to the success of both the National Disability Strategy, the NDIS and parallel reforms that are occurring for the mental health sector. While this requires nine separate pieces of Commonwealth and state/territory disability-related legislation to be harmonised this is an important piece of foundational work towards Australia meeting its obligations under the United National Convention on the Rights of People with Disabilities (UNCRPD). The UNCRPD also speaks to the rights of people who may be subject to involuntary mental health treatment and for this reason mental health related legislation also needs to be considered in developing a national quality and safeguards framework.

In addition to community consultation, investigation of both national and international evidence surrounding best practice models of monitoring, safeguard mechanisms, advocacy and complaints processes is recommended (i.e., what is considered to be 'best practice' in these areas).

MHCC supports directions for a national framework that is co-regulated (i.e., that balances a legislative framework with individual NDIS participants 'choice and control'). This means being mindful of a person's cognitive/decision making capacity while consistently supporting them in a way that promotes self-directed care. MHCC support focused development of the peer workforce as a key strategy for ensuring quality and safety for people with psychosocial disability in an environment that is unlikely to be fully regulated.

While supporting notions of co-regulation, we also need to have the highest regulatory standards in place where the benchmark applies to all providers At a minimum all providers need to be registered and accredited by the NDIA or another specified regulatory body to ensure agreed standards of safety and quality. This enables consumers to have some level of confidence in the providers that they choose to deliver the services and supports identified in their plan.

Building participant capacity

An emphasis on enhanced supported decision-making – as opposed to substitute decision-making (i.e., guardianship etc.) – is a practice essential to building a participant's capacity in addition to their formal and informal support networks. It will be important to ensure that specific assessment for decision-making capacity is built into NDIA processes and that participants are offered services that ensure supported decision-making, as well as support and information for families and carers.

For many people with psychosocial disability, experiencing other complex/diverse need, there is often little or no natural support system (including but not limited to families and carers) to be built upon. Active and assertive outreach and engagement approaches for both participants and their actual/potential natural support networks is required. Sector feedback from a Tier 2/Information Linkages and Capacity Building consultation at the Hunter trial site (March, 2015) indicates that too much seems to be expected of what are already overburdened and under-resourced consumers, carers and community organisations. This is in relation to capacity building that lacks investment in developmental support services grounded in evidenced-based practice or 'safeguards' (i.e., recovery oriented practice approaches to 'risk management'/supporting dignity of risk through self-directed, person-centred care planning approaches).

Monitoring and oversight

MHCC supports the transitional establishment of an independent national complaints, monitoring and oversight process that is tied to a state-based body (e.g., the NSW Ombudsman's Office). However, disability service and supports 'consumers' should also have recourse to the same complaints mechanisms that are available to all Australian citizens (e.g., the Australian Consumer Complaints Commission/ACCC).

MHCC encourage the DSS to closely examine the particular roles of the NSW Official Visitors and Community Visitors across mental health, disability and social care contexts. This is in light of the 2014 amendments to disability and mental health legislation in NSW, and related amendments to Community Services (Complaints Reviews & Monitoring) Act 1993 (CS CRAMA) and NSW enabling legislation for the NDIS. These illustrate the value of monitoring and oversight functions as opposed to having a primary complaints management function. We note also that a review of NSW governing bodies for both the Official Visitors Program (Mental Health Review Tribunal) and Community Visitor Program (NSW Ombudsman's Office) is underway.

NDIA provider registration

Preferred Option 4: Mandated participation in an external quality assurance system for certain providers of supports.

Accreditation against agreed standards is the preferred quality assurance pathway for organisational provider registration. Where services are provided for people with psychosocial disability related to a mental health condition, this should include the development of approaches for mutual recognition of both disability and mental health standards.

However, the issue of 'sole providers' – of which there are a growing number - is of concern. While some of these will likely be Australian Health Practitioners Regulation Agency (AHPRA) registered health professionals the registration process does not necessarily ensure quality and safety. Furthermore, other providers will not be AHPRA registered (e.g., social workers, counsellors and psychotherapists, cleaners, drivers). Furthermore, it is likely that other 'sole providers' may not be AHPRA registered.

Ensuring staff are safe to work with participants

Preferred Option/s 3 & 4: Requirement for referee, police and 'working with vulnerable people' checks. Create a barred persons list.

Reference and police checks are fundamental safeguards which must be required as a minimum for staff employment. It is prudent to have additional safeguards, including a requirement for clearance to work with vulnerable people and a barred persons list. Both a clearance system and an exclusion scheme must be centralised, to avoid discrepancies in standards across states.

For psychosocial disability and recovery support work, the Certificate IV level qualification (i.e., in Mental Health or Peer Work or equivalent) has been agreed by Community Mental Health Australia (CMHA) (the alliance of eight state peaks representing mental health non-government organisations) as a minimum qualification for staff who are employed to deliver support services. This minimum ensures that the workforce is adequately trained with the required skills sets and competencies with a level of understanding regarding the principles underpinning safeguarding.

MHCC supports the move towards certification of, and professional development requirement for, disability support workers. However, the skills required for psychosocial disability and recovery support work that are consistent with good recovery oriented mental health practice are likely different to those required for more traditional disability support work.

Systems for handling complaints

Preferred Option 3b: Disability complaints office.

A statutory complaint mechanism/body needs to be established which is external to the NDIA in the interest of procedural fairness, natural justice and transparency. With each state having similar statutory bodies in place which could be used as part of the complaints mechanism for the NDIA.
Ensuring staff are safe to work with participants

Safeguards for participants who manage their own plans.
Preferred Option 3b: Self-managing participants must be required to choose from universally registered providers.

The safeguard and quality assurance frameworks that apply to other NDIS participants should also apply to people that manage their own plans. Both organisational and 'sole trader' providers require universal registration requirements, although these may vary depending on the type of services and level of participant risk involved.

Reducing and eliminating restrictive practices in NDIS funded supports.
Preferred Option 3: Providers would be authorised to make decisions under specific conditions.

Reducing and eliminating the use of restrictive practices is consistent with the UNCRPD and its intent to protect the rights, freedoms and inherent dignity of people with disability. This includes involuntary mental health practice including, for example, involuntary hospitalisation and Community Treatment Orders (CTOs). Requirements of involuntary mental health orders have impacts not just on 'clinical' mental health services but also the non-government providers of psychosocial disability and recovery support services, which are increasingly funded through the NDIS.

The Australian Law Reform Commission (ALRC) released a Discussion Paper in May 2014 regarding 'Equality, Capacity and Disability in Commonwealth Laws'. This Discussion Paper is the second consultation document in the ALRC's Inquiry into Commonwealth laws and legal frameworks that deny or diminish the equal recognition of people with disability before the law, and their ability to exercise legal capacity and is a precursor to the current National Quality and Safety Framework consultation. Content related to consideration of state/territory based (involuntary) mental health legislation as restrictive practice is included on pp 231-233 and elsewhere. Review of this state/territory legislation is recommended, however, it appears that the NDIS is not to be a vehicle for this to occur.

The use of restrictive practices and seclusion in Australia for people affected by mental health conditions – including psychosocial disability – is of great concern as detailed in the National Mental Health Consumer and Carer Forum (NMHCCF) position statement 'Ending Seclusion and Restraint in Australian Mental Health Services' (2009) and advocacy brief 'Seclusion and Restraint in Mental Health Services' (May 2012).

Supporting this position, 'The Australian Civil Society Parallel Report Group Response to the List of Issues' as part of Australia's appearance before the UNCRPD in 2013 expressed concern that people with disability, especially cognitive impairment and psychosocial disability, are 'routinely subjected to unregulated and under-regulated behaviour modification or restrictive practices such as chemical, mechanical and physical restraint and seclusion' (8.6 of the discussion paper).

The absence of a discourse in the NDIS quality and safeguards consultation paper regarding the use of restrictive practices both under and outside of existing state/territory mental health legislation as identified above is of great concern. MHCC supports the position that use of seclusion and restraint practices should be reduced, with the ultimate goal of elimination of such practices, as set out in the 'National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector' (2014).

In summary, MHCC supports the development of a national NDIS quality and safeguards framework that:

- is predicated on notions of co-regulation including approaches that promote individual and community capacity building;
- includes harmonisation of Commonwealth and state/territory disability, mental health and guardianship legislation;
- uses a personalised approach to supports and services planning;
- enhances the capacity of participants - and their families and carers - through enhanced reliance on supported decision making, and
- moves Australia in the direction of reducing/eliminating involuntary mental health practice including but not limited to seclusion and restraint as per the requirement of the UNCRPD.

Please feel free to make contact should you require additional information in relation to this submission.

Corinne Henderson
A/CEO
Mental Health Coordinating Council
E:corinne@mhcc.org.au
T: 02 9555 8388#101

Attachment 1

Quality and Safety Objectives, Outcomes, Recommendations and Priorities Arising from the Mental Health Coordinating Council and NSW Mental Health Commission NSW NDIS and Mental Health Analysis Partnership Project[1]

2013/14 Objective

Explore how psychosocial disability should be understood and included under the NDIS in terms of equity, monitoring and safeguard mechanisms.

2013/14 Outcome

Concerted efforts to promote legislative reform that integrates supported decision-making into National and state disability and mental health legislation needs to be undertaken to ensure development of an effective national framework for quality and safety predicated on the rights of people with disabilities associated with NDIS implementation.

2013/14 Recommendation/s

- Provide monitoring and safeguard mechanisms that provide oversight and accountability across mental health community managed and for-profit providers both in terms of safety, best practice and consumer and carer satisfaction.
- Provide complaint mechanisms that support people to initiate and follow through with appeals and complaints, and provide supported decision making opportunities for people who require assistance in advocating for themselves.

2014/15 Priority Action

Influence the development of the NSW and national framework for development of NDIS quality and safeguards processes inclusive of mechanisms to encourage the adoption of approaches to involuntary mental health treatment consistent with the human rights aspirations of the United Nations Convention on the Rights of People with Disabilities (UNCRPD).

[1] Mental Health Coordinating Council & NSW Mental Health Commission 2014, *Further Unravelling Psychosocial Disability – Experiences of the National Disability Insurance Scheme in the NSW Trial Site: A 2013/14 Mental Health Analysis.* MHCC, Sydney (draft).

Attachment 2

Brief Summary of Key Issues Arising Regarding NDIS Quality and Safety Framework Consultation Held at the Mental Health Coordinating Council and NSW Mental Health Commission Hunter NDIS and Mental Health Community of Practice Forum 17 March 2015

Small group participants were invited to consider: *"What might be some of the key aspects of a National Disability Strategy/NDIS Quality and Safeguarding Framework for people with MH conditions that may be different from 'traditional' disabilities"*?

The verbatim detailed small group feedback provided from this consultation is available as a separate document and key themes identified through large group work are:

- Strengthened supported decision making practice is essential to ensuring quality and safety of services for people with psychosocial disability while also supporting their journeys of recovery.
- Staff quality; education and training in psychosocial rehabilitation and recovery support (including professional development)
- Consideration of statutory framework/legislation in the area of mental health
- Mental health client risk assessment/management/safeguards issues (including involuntary/forensic status; insight/volition and definitions; monitoring and accountability)
- Concern about NGO staff knowledge and skills where there are not strong relationships with mental health (public)clinical services, including 'clinical' risk assessment
- You need more services and supports bundling for flexibility to ensure safeguards in mental health work
- How to achieve quality assurance for service coordination (i.e., 'coordination of supports' both within and outside of Partners in Recovery)
- How to monitor restrictive practice/evidence based practice – monitoring.