

My Plan Manager | Submission: Tune Review of NDIS Legislation

October 2019

About My Plan Manager

My Plan Manager (MPM) is the leading plan manager and largest service provider for the NDIS, supporting over 13,000 participants and growing.

Our organisation is committed to delivering more choice and control to NDIS participants who opt for plan management: an extension of self-management without the administrative burden and complexities.

We provide client-focused services that include both financial and service intermediary supports, connecting participants with services and taking the stress out of the administrative upkeep of NDIS.

Recommendations

MPM has made a series of recommendations including what a Participant Service Guarantee should look like (Recommendation 1) to enable the NDIS to better support participants in achieving independence and social and economic participation as outlined in the legislation.

The subsequent recommendations are all focussed on improving the NDIS to achieve the principles of the Guarantee, and therefore deliver better outcomes for individuals with disabilities to have the same reasonable opportunities in life as the general population.

The Recommendations are as follows:

- 1. The Pillars of a Participant Service Guarantee**
- 2. Adopt COAG's 2015 Recommendations**
- 3. Cut excessive red tape**
- 4. Direct the NDIA to change the scope of its decision making processes**
- 5. Unutilised NDIS funds to rollover as capital, not be deemed general revenue**
- 6. Give participants choice and control of their NDIS plans**
- 7. Allowing non-registered providers to support all NDIS participants**

Over the following pages, MPM explores each recommendation including the challenges it seeks to overcome and the solutions to do so for better NDIS participant outcomes.

Submission Overview

My Plan Manager understands first-hand, through the shared experiences with 13,000 National Disability Insurance Scheme (NDIS) participants, the need for a Participant Service Guarantee.

The Guarantee must be a commitment by Government and the NDIA to deliver better access, timeliness and support for NDIS participants. The key to meeting this commitment is to reduce unnecessary red tape which is responsible for many of the issues negatively impacting participants and preventing the NDIA from delivering a national priority.

The NDIS is struggling with competing priorities and confusion between the purpose of the scheme and implementation. As a result, many participants are not being adequately supported to achieve their goals and many providers who offer necessary services and competition are struggling to access the market.

The NDIS, established through the National Disability Insurance Scheme Act 2013, was designed to be flexible, innovative and progressive in supporting Australians with a disability to overcome challenges, break through barriers, participate in the community and become more independent in living their lives.

However, the NDIA is operating under the lens of welfare rather than insurance-based thinking when interpreting the legislation and developing associated red tape, leading to poorer participant experiences and possibly outcomes. More particularly, participant choices are being scrutinised on the basis of financial viability of the scheme rather than the legislated objectives and principles of the Act. Longitudinal Insurance based thinking should reduce the impact of an individual's specific disability and give them the opportunity to live 'ordinary' lives, which is otherwise unachievable.

Operated correctly and efficiently, the NDIS will see the costs of a participant decrease over a lifetime, as opposed to a typical welfare model. The NDIS should be viewed by Government and the NDIA as a hand up and not a hand out: enabling and empowering individuals to achieve outcomes that are impacted by disability.

To assist the Review, My Plan Manager has made a series of recommendations for consideration on what a Participant Service Guarantee should look like and how it can be achieved.

Recommendation 1: The Pillars of a Participant Service Guarantee

MPM recommends that a Participant Service Guarantee is established which reflects the objects of the NDIS Act. By supporting NDIS participants with the intent of the scheme, it will enable the NDIS to best support participants achieve fair and reasonable outcomes of living a 'normal' life which are otherwise limited by their specific disability.

To achieve this, MPM believe the following are the priority pillars for the Guarantee:

- **Accessible:** The NDIS must be clear, simple and easy for all people with a disability to understand and apply consistently. All participants must be supported in finding appropriate service providers, ensuring that location, culture and diversity are not significant barriers.
- **Respect:** All NDIS applicants and participants are treated with respect and understanding. This extends to the principles of dignity of risk.
- **Expert:** Decisions made by the NDIA and Local Area Coordinators for NDIS applicants and participants are supported with a high-level of expertise and diverse understanding of all disabilities to improve both advice to participants and decisions made to support goals and needs.

- **Choice and control:** Recognise that NDIS participants have the greatest understanding of their needs and obstacles to living a normal life relative to the general population. It is important to recognise from a dignity of risk principle that within the context of the legislation choice and control resides with the individual. It is important that too much red tape and welfare-based thinking does not inadvertently create a situation of their choice: our control.
- **Timely:** All NDIS decisions, including access, planning and review, are made with appropriate consideration and done in a timely manner.
- **Valued:** as set out in the consultation paper

With regard to the Possible Principles set out in the consultation paper we draw attention to the following:

- **Decisions made on merit:** As per the Terms of Reference for the Review, “all decisions should be aligned to the objectives and principles of the Act”. It is important not to introduce notions of “merit”. All NDIS decisions must consider the nature and impact of an individual’s disability, and how it impacts their ability to live a normal life with equal opportunity relative to the general population. This is not a merit or qualified based approach. It is a human rights-based approach which aligns Australia to the UN Convention.

Recommendation 2: Adopt COAG’s 2015 Recommendations

MPM recommends that the NDIS legislative framework is amended through adopting COAG’s agreed amendments from the 2015 NDIS Act Review. This would improve participant outcomes and support the principles identified in Recommendation 1.

We believe the priority amendments are:

2a. Amend subsection 4(15) to reflect the importance of a diverse and sustainable market that provides choice and control and high-quality supports to people with disability.

2b. Clarify that the Minister must consider all the objects and principles of the NDIS Act when making NDIS Rules, not only financial sustainability.

NDIS was created to be flexible and innovative for participants, and to deliver choice and control. Recommendation 2a is imperative to enhancing access for participants to more providers, competition (better range and pricing) of services and solutions for their specific disability.

Recommendation 2b is integral to both the outcomes and the human rights agenda of the NDIS Act and the UN Convention. People with disability have an unqualified right to live towards independence underpinned by social and economic participation. To achieve this, welfare-based thinking and red tape must not be prioritised higher than funding reasonable and necessary supports to assist people with disability to achieve their agreed goals.

Recommendation 3: Cut excessive red tape

Key areas for review are:

- a. Plan review and brought forward cessation dates can be ad hoc and inconsistent, often leaving Providers with unpaid invoices and creating a considerable administrative burden for all parties. At present MPM is waiting on payment for legitimate invoices totalling approximately \$1.4 million. The impact also extends to escalated behaviours, emotions, distress and high levels of

frustration for participants. As Plan Managers we are often caught in the middle in trying to mediate and explain something which cannot be easily rationalised in a commercial sense.

- b. There is no clear and consistent approach for seeking feedback or approval for items/services where there may be reasonable grounds for questioning whether the items/service are aligned to assisting a person to meet their goals. A participant guarantee which provides a timely pathway to transparent approval decisions would considerably alleviate the stress of participants seeking approval for out-of-the-ordinary purchases/services.
- c. It is also recommended that consideration be given to developing and introducing a capacity building support (line item) which targets Dignity of Risk assessments relating to such items/services. This would operate in much the same way as an OT risk assessment for NDIA funded equipment.
- d. The process for reporting potential or alleged neglect or abuse is a concern. The current approach is that only matters involving registered providers are dealt with by the Quality and Safeguarding Commission. This means that abuse or neglect allegations from participants working with non-registered providers are handled as a complaint. Trying to support a participant (victim) through this process can be difficult.
- e. Connected to this, it is recommended that non-registered providers who provide services to participants (e.g. core supports such as personal care) undertake a worker screening. Although this may introduce red tape this is likely to be significantly outweighed by the potential benefits to the participant experience.
- f. Purely in terms of red tape, the process for reporting Fraud (or potential fraud) results in dealings with a number of NDIA agencies. The lack of communication and duplication of information can be extreme. Trying to support a participant (victim) through this can be difficult. The matter is complicated (and emails and other communication drawn out) when the NDIA declines to offer an opinion about whether a payment can proceed whilst an allegation is being progressed.
- g. The construct of the NDIA Price Guide in relation to matters as GST and non-registered providers results in a considerable amount of bureaucracy and time-consuming interaction between Providers and Participants. This is particularly prevalent in circumstances when the narrative accompanying the use of the Price Guide contradicts other legal or qualified advice (e.g. advice that is contrary to an ATO determination). The red tape results in a poorer provider experience and participant experience.
- h. The medium-term strategy relating to future price regulation (or de-regulation as per NDIA strategy) needs to be worked through. At present, the focus appears to be on increased price guide regulation and red tape which again leads to worse provider and participant experiences. This extends to negatively impacting the choice and control principles of participants (i.e. relating to their use of a non-registered provider who may charge slightly over the price guide) and/or participants not being able to access services when the NDIA bureaucracy is unwilling to

sanction a reasonable adjustment (as defined in the Disability Discrimination Act) to the Price Guide to ensure a participant can access a non-registered service provider (i.e. a Provider who is not respondent to the Price Guide).

Recommendation 4: Direct the NDIA to change the scope of its decision making processes

Similar to Recommendation 2b, MPM recommends that the Minister for the National Disability Insurance Scheme issues a directive to the NDIA to clarify the interpretation of the NDIS legislation, when making a decision, as follows: financial sustainability is never weighted with greater importance than the reasonable support needs of the participant, as determined by the participant.

MPM is of the strong view that participants are being viewed by the NDIS and NDIA as welfare recipients rather than insurance claimants. As a result, the needs of the participants are being viewed by the NDIA – and by extension society – with unfair scepticism and disregard the individual's choice and control.

MPM believes the objects of the *National Disability Insurance Scheme Act 2013* are, for the most part, fair and reasonable.

However, the interpretation of the objects by the NDIA can lead to issues and conflicts. This is largely due to how the objects are achieved and given effect (see below).

MPM believes that the specific objects which must be strengthened include:

- Support the **independence and social and economic participation** of people with disability.
- Provide **reasonable and necessary** supports, including early intervention supports, for participants in the National Disability Insurance Scheme launch.
- Enable people with disability to exercise **choice and control** in the pursuit of their goals and the planning and delivery of their supports.
- Promote the provision of high quality and **innovative** supports that enable people with disability to maximise independent lifestyles and full inclusion in the community.

The legislation cites a number of considerations in determining how the NDIS is implemented, including:

- Progressive implementation
- The financial sustainability of the NDIS

The objects of the NDIS Act are being stifled by interpretation of the Act. The purpose of the NDIS is to assist the participant achieve their goals which are a greater challenge, compared to the general population, due to their disability. The legislation is not being implemented with the flexibility or progressiveness that was intended.

Recommendation 5: Unutilised NDIS funds to rollover as capital, not be deemed general revenue

MPM recommends the Government treat NDIS funds as capital, not as general revenue. Embracing this principle will remove an incentive of Government and the NDIA to reject claims, and assess claims and eligibility on their merit.

Currently, the NDIS and NDIA processes prioritise the sustainability of the scheme rather than the purpose, leading to an imbalance in many decisions for participant claims and eligibility. We accept that the financial viability of the scheme is paramount to support Australians with a disability into the future, but it must not come at the cost of failing to support those with a disability now.

As stated earlier, the NDIS is being viewed by NDIA through a welfare lens instead of longitudinal insurance-based thinking. At a macro level this extends to NDIS funding being classified as 'general revenue', which, if unused, is absorbed back into Government finances. By classifying NDIS funds as general revenue, the funds will continue to be treated as welfare – and the equation will remain the same: every dollar not spent on a claim is a dollar more in the government's budget.

It is recommended if there are funds remaining at year-end, they should be rolled over and accessed through future claims. There should be no implied incentive on the part of the NDIA to deliver an underspend back to the Commonwealth. In fact, it is possible that substantial short-term underspends in early intervention may cause future issues.

Recommendation 6: Give participants choice and control of their NDIS plans

MPM recommends that participants and their carers be allowed to develop their own NDIS plans and be offered plan management where appropriate to give choice and control.

One of the key causes of concern and angst for participants is the time taken in developing and reviewing plans. MPM believes that a key contributor to this is the understandable difficulty faced by Local Area Coordinators in writing appropriate plans for each participant.

To give greater choice and control to participants, they or their carers should be allowed to prepare their own plan, rather than have someone without necessarily the expertise of the specific disability develop it on their behalf. In most cases, participants understand what supports they need far better than others could be expected to. This would significantly reduce an administrative burden on the system, achieve greater timeliness of processes, and ensure more appropriate plans and better outcomes for participants.

Local Area Coordinators are not sufficiently trained to handle or understand the complexities of some disabilities and therefore cannot adequately support a participant in developing and implementing their NDIS plans. Given the breadth of disabilities supported by the NDIS, this is hardly a surprise.

In addition, it is in the best interests of participants that the NDIA and Local Area Coordinators ensure participants are aware of plan management as a service if applicable. By removing the administrative burden for participants and connecting them with services, it enables participants to achieve greater choice and control of their plans, and support how they engage with the NDIS.

Based on MPM's market surveys in June 2019 which surveyed over 200 NDIS participants, we found the following:

- 52% of participants were not informed of plan management at their last planning meeting and are not aware of the services that a plan manager provides
- Participants who are using a plan manager are more satisfied with their plan (average score of 3.8 vs 3.3 for non-plan managed)
- Participants who are using a plan manager are more likely to have exhibited choice and control – ie. are more likely to be using new service providers and more likely to have changed service providers

Recommendation 7: Allow non-registered providers to support all NDIS participants

MPM recommends that agency-managed NDIS participants be allowed to claim services from both registered and non-registered providers.

Limiting agency-managed participants to only registered providers is leading to worse outcomes to both participants and the viability of the NDIS. By limiting providers, the NDIS is taking away right of self-determination which impacts the individual's choice and control, and access to services.

The safeguards for both registered and non-registered NDIS providers need to be the same both require appropriate screening, qualifications and registrations that meet the standards for the general population.

Dividing providers into two groups through entry barriers has led to a two-tiered market, artificially distorting prices which means many participants receive less and the NDIS pays more.

The registration system also impacts access for participants. Currently the market is not established to meet demand of NDIS participants, especially in regional and remote communities. By removing regulations, it will support the proposed Participant Service Guarantee, allowing greater choice, control, flexibility and access in how they engage with NDIS.

Anecdotally, MPM works with 4,000 registered service providers and 7,500 non-registered providers. Non-registered providers often offer services at a lower cost for participants and avoid substantial registration and compliance costs. Our sampling of provider invoices (4 data samples of approx. 600 provider invoices each) currently indicate that one third of non-registered providers may be submitting invoices below the price guide

Conclusion

MPM believes very strongly that the NDIS is a critical piece of legislation which empowers and provides equal opportunity for those Australians with a disability to be included in an all-abilities society.

We believe the recommendations set out in this paper will enable the NDIS to reach its full potential.

We would welcome the opportunity to discuss or expand upon any of the points raised within this submission.