

NDIS Act Review and Participant Service Guarantee (Tune Review)

October 2019



**NSW Trustee
& Guardian**

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Role of NSW Trustee & Guardian

NSW Trustee & Guardian (NSWTG) is a statutory agency within the NSW Stronger Communities Cluster.

It supports the Chief Executive Officer and the Public Guardian to protect the rights, dignity, choices and wishes of the people of New South Wales. Our services support and protect some of the most vulnerable members of the NSW community, as well as supporting people at critical moments in their life.

We do this by providing independent and impartial financial management and guardianship services that supports clients and helps them manage their health, lifestyle and financial affairs.

We are appointed for people with cognitive impairment which impacts their ability to make decisions in different areas of their lives. We can be appointed as financial manager or guardian by the NSW Civil and Administrative Tribunal (NCAT) or the Supreme Court.

Financial management orders appoint the NSW Trustee (a function held by the CEO) where there is no other appropriate option available. The Public Guardian is the 'guardian of last resort' and will only be appointed if it is determined a guardian is needed and a suitable private guardian - usually a family member or friend of the person who is willing to take on the role - cannot be identified.

The decision-making functions and delegations are separated to ensure that staff employed to make guardianship decisions are different to those who make financial management decisions. This limits the influence a guardian or financial manager has over one client and removes any conflict of interest when making decisions.

Relationship with the NDIA

NSWTG's relationship with the National Disability Insurance Agency (NDIA) which administers the National Disability Insurance Scheme (NDIS) is through its role as a financial

manager or guardian for people with cognitive impairment.

NSWTG has 4,500 financial management clients with an NDIS plan in place. There are 1,221 clients for whom we act as guardian that have an NDIS plan in place. These figures are current as at July, 2019.

Where the Public Guardian is appointed for guardianship, NSWTG is involved in the NDIS pre-planning and planning process, including releasing information to the NDIA planners and attending planning meetings. NSWTG negotiates with the NDIA on behalf of the participant about what is accepted as reasonable and necessary supports and seeks reviews of plans when needed. The Public Guardian can be appointed to make decisions about services provided to the participant through their NDIS plan. Guardians advocate for the participant to receive funding for appropriate services and support, while negotiating with support coordinators about the selection of the most appropriate service providers for the participant. Guardians can decide which service providers will provide a service to the participant.

In 2018-19 the Public Guardian made over 5600 decisions for clients in relation to the NDIS. These include service and support decisions.

For clients under a financial management order, NSWTG performs the following roles:

- informs clients that they may be eligible for the NDIS
- provides the NDIA with financial information to assist in planning clients' NDIS packages and ongoing support to ensure the development of meaningful plans
- provides the client a copy of their personal budget to take to their planning meeting or review
- manages their transport funding if they are unable to manage it themselves.

NSWTG also reviews NDIS service and accommodation agreements and agrees when the client needs to pay a personal financial contribution.

Please note that where client examples have been used in this response, their

names have been changed to protect their privacy.

people from Culturally and Linguistically Diverse (CALD) backgrounds, LGBTQIA+ and other individuals.

Participant Service Guarantee

a. Principles for NDIA service guarantee

Principle	Description
Timely	The NDIS process will be easier to understand and use, enabling decisions about access, planning and review to happen promptly.
Engaged	The NDIA engages with people with disability, their family, carers and other support persons when developing operating procedures and processes.
Expert	NDIA staff have a high level of disability training and understand the impact particular disabilities have on people's lives. They understand what supports are most effective for a person's disability.
Connected	The NDIA works well with governments, mainstream services (such as health, education, justice services), disability representative groups and providers to ensure people with disability have coordinated and integrated services.
Valued	Participants, their families, carers and other support persons feel valued in their interaction with the NDIS, and know where to go if they need further assistance.
Decisions are made on merit	The NDIA acts in a transparent, informative and collaborative spirit so that participants understand why decisions are made.
Accessible	All people with disability can understand and use the NDIS, and the NDIS ensures its services are appropriate and sensitive for Aboriginal and Torres Strait Islander people,

1. Which of the above principles do you think are important for the NDIA to adhere to, and why?

NSWTG considers all of these principles to be important in making the NDIS a system that delivers benefits for participants.

There have been inconsistent experiences by participants we represent and difficult processes can act as a deterrent. These principles appear to and should aspire to achieve fairness and transparency.

The "Engaged" principle should not just apply to 'developing operating procedures and processes'. It has been the experience of NSWTG that engaging with the participant, their family, carers and other supports throughout the entire process delivers benefits to the participant. We have seen many occasions where the person (and their guardian) were not informed of the planning meeting or the availability of the plan which then has adverse impacts on the person.

For example, Alexi is a 33 year old man, diagnosed with schizophrenia. He is currently without permanent housing and has been living in a shelter for over 6 months. Alexi's plan commenced in August 2018 and expired February 2019. The guardian was unable to determine if a planning meeting had occurred or if there was a new plan. Alexi had multiple health issues which were further compounded by the absence of a plan, supports and accommodation. Had the NDIS planner engaged with all of Alexi's necessary supports from the start, he may have had a better outcome and would not have needed to live in the shelter.

The "Decisions made on merit" principle would benefit from being expanded to state that a participant will be given accessible information that clearly details on what grounds the decision was made and the participant's (or their nominee/representative) right to seek a review.

2. In your experience with the NDIA, do you think they fulfilled the above principles? If not, how are they falling short?

NSWTG continues to escalate many cases due to delays experienced by participants. These delays often leave the participant in crisis or without support. Between November 2018 and August 2019, the Public Guardian made 24 referrals to the Critical Service Issues Response (CSIR). Supported Independent Living (SIL) arrangements, communication around plans and delays in plan reviews are the most common subjects of the referrals through the CSIR process, indicating a need for consistency, clear communication, policy and guidance.

3. What other key principles are important for the NDIA to follow, that could be included in a Participant Service Guarantee?

No comment.

b. Service Standards

4. One way to measure these principles is through a set of 'Service Standards'. Some ideas for what these Service Standards could be are listed in Attachment A. Do you think these Service Standards are fitting? Are there other standards you believe should be included?

The standards are fitting and the implementation of these standards would support these principles.

5. Do you have any ideas on how we can measure how well NDIA has delivered on each of the principles?

The NDIA could consider monitoring: the time taken to review decisions and plans; number of plans which require unplanned reviews because they did not meet the needs of the participants or circumstances changed; number and types of complaints; the number of participants who do not use their full package and why. This data will assist in measuring against each of the principles.

Evaluating matters that are escalated, for example through CSIR, could provide a basis for a learning and improvement process.

Participant experience

a. Eligibility and application

6. What are some of the significant challenges faced by NDIS participants in the access process?

To obtain sufficient funding for a person many reports may be required to provide evidence of current disability and needs. The cost of reports is high and comes directly from the person's NDIS funds. This reduces what is available to spend on their actual support services. More consideration needs to be given to the person, their supporters/family and guardian about their knowledge of the person's support needs.

Participants are experiencing issues with planners understanding the difference between the need for support and whether the participant engages with the supports. This has resulted in the participant, who may need support, not engaging with the level required due to lack of funding provided for support coordination. A support coordinator would enable the participant to engage with the supports. The outcome of a participant not engaging with supports is an underspend of NDIS funds resulting in the NDIA not funding the level of support required in the next plan.

There is also difficulty in gaining additional evidence, for example for someone in prison who is in a restricted environment. Full functional assessments cannot be made in such a restricted environment, this can be compounded by lack of any previous assessments, and/or the person may not engage in the assessment process. For this cohort it can result in the person remaining in prison beyond time served (because they have no supports to be released to), or they are released with no supports, increasing the likelihood of recidivism.

7. The NDIS Act currently requires the NDIA to make a decision on an access request within 21 days from when the required evidence has been provided. How long do you think it should take for the NDIA to make an access decision?

14 calendar days.

8. What do you think the NDIA could do to make it quicker or easier to access the NDIS?

Access to the NDIS can be a difficult process depending on the support a participant has. Improved and accessible guidelines for how to apply, what evidence is needed, including specific reference to the types of professional reports required would assist in ease of access. Advice on what options are available if evidence cannot be easily accessed, and on other options such as early intervention would also benefit the process.

9. Does the NDIA provide enough information to people when they apply for access to the NDIS? If not, what else could they provide that would be helpful?

No comment.

10. Is the NDIA being transparent and clear when they make decisions about people's access to the NDIS? What could the NDIA do to be more open and clear in their decisions?

No comment

b. Planning process

10. What are some of the significant challenges faced by NDIS participants in the planning process?

All NSWTCG clients, whether they are guardianship or financial management clients, who are NDIS participants would benefit from having an NDIS Planner. Due to the nature of their cognitive impairment and complex needs usually coupled with limited or no support networks, having an NDIS planner would be of benefit by ensuring the plan developed reflects their needs. Some have a Local Area Coordinator (LAC) which further delays the development of the plan as LACs do not have any decision-making powers. Furthermore, many of the LACs do not have the disability experience to support our complex clients.

Where possible, being able to maintain the same planner for a client would enable a faster response when issues arise. Delays occur when a new planner needs to be engaged to establish

a relationship with the participant and ensure all factors in the client's life are reflected. NSWTCG staff have observed varying experience of planners regarding disability, support needs and this is often reflected in the quality of the plans. A planner with solid experience and expertise in working with people with multiple disabilities will understand more readily the need for supports that are being sought. NSWTCG has observed a need for reviews of plans and decisions where necessary supports are not identified in the planning process.

Where NSWTCG is appointed as guardian, significant gaps occur when NDIA disputes the currency of stated disability needs or lack of recent functional assessments. These gaps in information can occur due to barriers in getting this from the participant, e.g. affordability, being in prison, insecure housing or homeless. When a person has multiple diagnoses, the planner may not have the experience to understand the links between a person's disabilities, the functional impact of these disabilities and their need for reasonable and necessary supports. This can result in the planner viewing the requested support as a 'health matter' and not a matter related to the disability even when it compounds the impact of the disability.

Where there are gaps in plans, the personal funds used by the participant to support the continuance of the plans until review is not claimable or reimbursed. Where NSWTCG is appointed as financial manager we have observed the need for participants to pay for supports not included or not funded adequately in NDIS plans. This impedes achieving their identified goals, participating in the community and has an impact on their quality of life.

As financial manager, NSWTCG has observed that initial Young People In Residential Aged Care (YPIRAC) plans had errors. For example, services provided by the aged care facility as part of aged care support were missing from the funding package. The resolution of these funding adjustments have not all been resolved to date. In many cases the original plan review is overdue.

Where a guardian has been appointed, NSWTCG has experienced instances where planners have set a time and date for a planning meeting without notifying the person, services, support

coordinator and/or a guardian. This results in a lack of representation of the person's will and preferences, current circumstances and a lack of advocacy for participant needs.

The current SIL application process is lengthy and complicated. The requested amount of evidence can be inconsistent between planners. This leads to significant cost, resources, and time in obtaining further assessments. NSWTCG has observed that for participants who do not have formal or informal supports to articulate their needs, the process is difficult and creates barriers to accessing a plan.

Where there have been considerable delays in the approval of a plan it has resulted in distress and financial loss to some clients. In particular, clients who cannot be discharged from hospital without Specialist Disability Accommodation (SDA) and SIL funding may experience financial hardship during the approval process where they are incurring hospital fees. Young people in residential aged care are also not able to exit their aged care facility without SDA and SIL funding and may be financially disadvantaged by the SIL approval process.

11. Are there stages of the planning process that don't work well? If so, how could they be better?

The inclusion of decision-making support for participants with cognitive disabilities would help participants maximise their involvement in the development of their plans. The involvement of key people, such as family members, in the creation of a plan suggests planners need to consider including funding for a decision-making support and capacity development in a participant's plan. Currently, the responsibility to establish what support the participant needs to be fully involved in the NDIS planning and implementation process is determined by the NDIA and their planners. Conversely, guardians have observed instances where planners and support coordinators are focussed on seeking advice from stakeholders rather than the participant to complete the plan. Where all the information for the plan is sought from or provided by stakeholders this reinforces the need for capacity building in the participant's plan to maximise the person's autonomy. NSWTCG's experience is that the inclusion of

capacity building is rarely included in these plans.

The introduction of draft plans would give the person, their family, supporters, advocate or guardian the opportunity to see if everything has been covered in the proposed plan and amend where necessary. This could also reduce the need to request reassessments and be a more efficient use of resources. Where NSWTCG is the financial manager, this could also provide an opportunity to identify supports currently paid by the individual that should be funded by the plan.

12. How long do you think the planning process should take? What can the NDIA do to make this quicker, remembering that they must have all the information they need to make a good decision?

The initial planning process and the information required should be clearly set out to achieve the best possible outcome for the participant.

13. Is the NDIA giving people enough, and the right type of information, to help them prepare for their planning meetings? If not, what else could they provide?

NDIS planning meetings require a degree of preparation for the participant and their family. Guidelines could be improved by being clear about what evidence is required by the participant prior to the meeting. This may reduce the risk of underfunded plans.

During meetings planners will often focus on broad goals, but not the evidence that is required to support that goal being broken down into the *reasonable and necessary supports* so services can be appropriately funded and the goals achieved. NSWTCG has observed that many plans have been significantly reduced and found subsequently to be based on a lack of professional evidence.

14. Is the NDIA being responsive and transparent when making decisions in participants' plans? If not, how could this be improved?

NSWTCG has observed that planners' interpretations of the support needs for people with complex support needs with a criminal justice history are not consistent. The interpretations can influence funding decisions

including SIL approval and the proportion of funding for the participant considered to be reasonable and necessary due to their disability. The NDIA planners may benefit from training to adopt a consistent approach resulting in the improvement of the planning process for participants with complex needs.

15. If you have been in the NDIS for more than one year, is it easier to make a plan now than when you first started? What has the NDIA improved? What still needs to improve?

When making guardianship decisions, NSWTCG has generally had a positive experience with the Complex Support Needs Pathway (CSNP) and the specialist planners within this pathway (including their skill and expertise). NSWTCG believes the CSNP was a much-needed response pathway.

It can be difficult to convince planners to make a referral to the CSNP. It is unknown whether this is because of a lack of understanding of the CSNP by the planners and NDIA service delivery staff, or lack of expertise in dealing with participants with complex needs.

c. Using and reviewing plans

16. What are some of the significant challenges faced by NDIS participants in using the supports in their plan?

The underfunding of some clients has resulted in them having to pay for SIL services from their own funds. Other clients who have been underfunded and do not have additional personal funds have been without services until a review of their plan takes place. This can result in homelessness, remaining in hospital for an extended period, or involvement with the criminal justice system.

When appointed as guardian, NSWTCG has observed that the level of funding for behaviour support in the SIL funding is often inadequate. It does not routinely allow for the full process of behaviour support to occur, including:

- developing behaviour support plans
- training staff in the implementation of plans
- monitoring, review, and allocated hours for 1:1 counselling for the person. The

counselling may be required due to the development of trauma that is related to the 'behaviour of concern'. This means that plans can remain stagnant.

We have seen occasions where planners have made assumptions about the competency of support staff. An example is if a person requires occupational therapy (OT) supports, funding may be given for an OT assessment and plan, but OT sessions are not funded. This is based on the assumption that the residential care workers or others can implement OT specialist therapies.

Access to reports for evidence of disability is further complicated by the very high cost of assessments and reports, and often there is not enough calculated for these in the person's plan to cover this cost. An example is behaviour support funding is often only enough to cover the development of a plan. No funding is provided for training of the person or staff in how the plan is to work and little funding for review and changes to the plan. This again, assumes a competency of support staff to implement a plan without the requisite understanding and skills.

NSWTCG financial management clients do not have the legal capacity to enter into contracts or agreements. Equally, clients for whom we are appointed guardian, with authority to make health and lifestyle decisions, cannot sign contracts relating to these functions. If a client does contravene the Order by signing an agreement which relates to the functions where we are appointed, this contract would not be valid.

Service agreements currently outline the rights and responsibilities of both the client and their service provider including clauses relating to client behaviour, complaint and exit processes. Should a client breach the terms of an agreement, for instance through their behaviour, the client can be exited from a service, placing them at risk of homelessness or lacking essential services. The introduction of a free market in disability support has created the requirement that service agreements are signed. This is a concern for participants with limited capacity as they may not be fully aware of what they are signing. This can impact their

service if they breach the agreement resulting in the withdrawal of the service.

17. Is the NDIA giving people enough, and the right type of information, to help them use their plan? If not, what other information could the NDIA provide?

The NDIA could provide consistent and easy to understand information of how funding line items can be implemented. This would benefit the participants or their support network to be clearer about how the funding can be used.

NSWTG is of the view that it would be helpful for the NDIA to automatically provide a copy of the client's plan to NSWTG. This will enable the process of accurate budgeting and awareness of disability related purchases that would ordinarily be funded under a client's NDIS plan.

18. What other advice, resources or support could the NDIA provide to help participants to use their plan and find supports?

Given the cognitive impairment and complex needs of NSWTG clients, ongoing funding for a high level of support coordination and allocation to experienced NDIA planners would be more supportive. Where this has not occurred, planners have not displayed the ability to understand and appropriately address the individual needs. NSWTG clients will not have the capacity to self-manage or manage their plan without professional support.

19. What are some of the significant challenges faced by NDIS participants in having their plan reviewed (by planned or unplanned review)?

Our experience has been that where it is identified that the funding is inadequate to meet the participant's needs, it is very difficult to have a plan reassessed. Plan reassessments have been requested and do not occur.

It is rare for service providers to be willing to carry on providing services when there is a gap in funding and the client is waiting for a review. It has been observed that the length of the waiting periods for the review to occur can result in anxiety for the person, their families and service providers. Waiting periods may place the person at risk of losing their support services. Where the service provider is not

receiving payment they may not be in a position to continue.

These delays also require increased resources for guardians to organise reviews, changes of circumstances and increased support coordination hours.

Where a participant is considering a review, a timeline for the process would better manage their expectations. The length of time taken for a review has been an ongoing concern given it can be from six to nine months. NSWTG has some clients with complex needs who do not have formal or informal supports, where the requirement to submit a review in writing disadvantages them. This is due to the difficulty in gathering the information required by the NDIA for participants without support.

20. What can the NDIA do to make this process easier or more effective?

NSWTG believes that the process may be completed in much shorter timeframes so that clients are not financially disadvantaged by lengthy delays in decision making. A review of timeframes, triage based on urgency of matter or level of risk is essential to ensure the safety and well-being of the participant.

21. How long do you think plan reviews should take?

14 calendar days.

d. Appealing a decision by the NDIA

22. What are some of the significant challenges faced by NDIS participants when they seek a review of an NDIA decision?

NSWTG has observed that understanding the review process is a major challenge facing participants and their families. Equally challenging is understanding the grounds the original plan was not approved.

Given the complicated nature of the NDIA process participants may need assistance to support the review.

23. Are there other issues or challenges you have identified with the internal and external review process?

We have observed instances where, for some participants, the length of time taken for an internal review has placed them at risk. This may be because they are left with inadequate support (for example a person who is at risk of serious harm), they may be living in insecure housing, or the lack of support places them in a vulnerable situation. The PG has experienced difficulties in contacting the planner (mainly where there is no Complex Support Needs Planner allocated). Lack of access to the planner where there are deficits in the plan impacts on the capacity to implement or purchase supports or seek advice about seeking a review.

24. How could the NDIA improve the decision review process?

NSWTG is of the view that the introduction of draft plans, improved practice of planners and improved engagement in the planning process could reduce the number of appeals to the Administrative Appeals Tribunal (AAT).

Appeals to the AAT follow completion of an internal review of the decision by the NDIA. A clear timeframe and information about the internal review of decision process, would assist participants.

25. How long do you think reviews of decisions should take?

21 Calendar days.

NDIS Act

a. Legislative framework

26. Do you think there are parts of the NDIS Act and the Rules that are not working or make things harder for people interacting with the NDIS?

Yes. One example involves a NSWTC financially managed client where the original plan was inadequately funded and the client's family submitted for a review of the plan. The following email was sent to the family by the planner:

"The Act's Operational Guidelines clearly state that a request for review will not be accepted if there is no new information available which is likely to affect the NDIA's assessment of a

participant's needs, and that exhausting funds is not a valid reason for a review request."

This created angst for the client and his family given that it was the NDIA's decision to underfund the plan. The family had provided extensive evidence through professional and medical reports prior to and in the planning meeting of the client's "reasonable and necessary" needs. This was ignored by the NDIA and the plan approval was for an amount that would not meet the client's high support needs.

NSWTG was informed that the response by the planner above (with further emails from her quoting the Act) made the family feel that the NDIA was deliberately making it difficult for the client to access appropriate supports. It was only due to the persistence of the family through complaints, assistance from the local MP and advocacy representation that the NDIA finally approved an appropriately funded plan.

This highlights the importance of strong advocacy for clients where the NDIA has not provided adequately for them. The example above is of a client whose family advocated strongly on his behalf. If this client did not have a strong family unit, his lack of appropriate supports may have gone undetected. NSWTC has many clients who are vulnerable and do not have anyone to advocate on their behalf. As a result, NSWTC is asked to fund services from the client's personal funds to make up for the shortfall of an underfunded plan. This potentially places the client at financial risk and exacerbates their vulnerability.

NSWTG has seen a reliance on legal guardianship in lieu of someone acting as a nominee for an NDIS Participant. Some participants under guardianship would have had a less restrictive outcome if the NDIA identified a nominee in the first instance including young people leaving care as a cohort.

27. What changes could be made to the legislation (if any) to:

a. Improve the way participants and providers interact with the Scheme?

Several participants where NSWTC is the financial manager, have SDA, SIL and support coordination provided by the same organisation. In some circumstances this may

work well in terms of familiarity. However, it could cause a conflict of interest where the one provider is responsible for accommodation, personal care and support coordination. If the provider does not meet the needs of the participant in any of these areas, it is difficult for any NSWTC client to raise or resolve these issues.

b. Improve the access request process?

No comment.

c. Improve the participant planning and assessment process?

NSWTC understands the NDIA has access to and produces engagement tools to improve participant planning and assessment processes. The guardian has often had to advocate for the support coordinator to use these to promote the will and preference in the planning process for the participant. The use of these tools and processes need to be promoted to and expected from the support coordinator.

d. Better define 'reasonable and necessary' supports?

There appears to be a conflict between how the justice and health systems influence decision-making for disability funding. This includes disputed views about criminogenic behaviours versus disability related behaviours.

For example, Daniel is a 28 year old man with an acquired brain injury (ABI) which occurred when he was 16 years old. Daniel has also been diagnosed with Bipolar Affective Disorder, Antisocial behaviour, Personality Disorder and Organic Delusion Disorder. Daniel has drug and alcohol issues and a criminal history that predates his ABI.

Daniel was incarcerated for approximately 12 months. In the lead up to his release from prison and his transition into the community, his provider submitted for a SIL of 3:1. The provider believed that this was the level of support Daniel required in relation to his ABI and to minimise the risk he posed to himself and to the community. The SIL team did not approve of this level of support and despite the available evidence, they determined that only 10% of Daniel's disability required support in considering what was "reasonable and

necessary". They considered Daniel's support needs related to his 'criminogenic' behaviour which was evident prior to his ABI and even if he did not have an ABI he would still not require this level of support.

The NDIA may need to consider that participants and their family/carers and in many cases their providers would have a clear idea of what is "reasonable and necessary". Recognition of their lived experience and views should be taken into consideration.

e. Improve the plan review process?

This has been answered under the heading "Appealing a decision by the NDIA".

f. Improve the internal merit review process?

No comment

g. Improve the way other government services interact with the Scheme?

The Public Guardian has difficulty being listed as a contact for the NDIS or having their legal authority recognised. This may result in the guardian not being informed or involved in the planning process, not receiving a copy of the plan until after the plan is established, and in some cases not at all.

As guardians or financial managers, NSWTC often experiences problems with the NDIS not sharing information about the participant or their plan or liaising appropriately if there are any issues or concerns regarding clients. This limits our ability to ensure clients are not paying for services or supports that are already funded in their plan, and that if a need arises we know what they have available in their NDIS funding.

NSWTC represents a small but significant cohort of people with complex support needs involved in the criminal justice system, particularly as guardian. This group face significant challenges in receiving appropriate funding and supports that will enable a smooth transition into the community.

Some of these issues include:

- limited NDIS supports provided while in prison. Justice, Health and Corrective Services do not have clinicians and other

resources to undertake clinical assessments and reports for NDIS

- transition planning being delayed or not occurring due to inconsistent information regarding what can be provided by the NDIA
- difficulty conducting assessments required by the NDIA to support NDIS applications, plan reviews and SIL quotes. Without these assessments funding cannot be obtained and service support and accommodation will not be provided. Further, SIL quotes will not be processed by NDIA unless the person has secured 'bricks and mortar'. This is compounded as Housing NSW cannot support a housing application if there is no guarantee of supports in place and guarantee of funding. We have at least one client who has been detained unnecessarily due to this process.

e. Plan amendments

28. What are the significant challenges faced by NDIS participants in changing their plan?

Foreseeable challenges may be the planner's understanding of why a participant requires a change of plan, the information the planner passes on to the participant to "assist" them in the process and the time it takes to assess the change.

NDIA criteria for evidence (as stated by planners) excludes trauma but this exclusion is controversial as it impacts on a significant number of participants (but not exclusively) from Out of Home Care, criminal justice sector and psycho-social disability. This may have to be challenged as it is inconsistent with current thinking regarding factors contributing to a variety of cognitive and psycho-social impairment.

NDIS criteria for plan reviews seem to give more weight on current evidence to the detriment of participants held in remand or without permanent housing, when accepted historical evidence would assist to determine funding in a participant's plan.

For example, Benjamin is a 28 year old man whose NDIS plan expired. There was a wait of two weeks for his new plan to be implemented.

Benjamin has very complex needs and the guardian needed to change support services for him as the previous service was not achieving outcomes. There was difficulty for the support coordinator to engage new services for Benjamin who was in crisis at the time, as his previous plan expired and the new plan has not yet commenced. Services were unable to log requests on the NDIS portal. This resulted in Benjamin losing his tenancy due to lack of supports and he was at risk of homelessness. Benjamin then entered the local Mental Health Unit largely due to the risks to his mental health should he be left without permanent housing. Although Benjamin stabilised after entering into the mental health unit, this discharge was delayed due to the lag in time with the old and new plan.

29. How do you think a 'plan amendment' could improve the experience for participants? Are there ways in which this would make things harder or more complicated for people?

The 'plan amendment' would be a welcome improvement to the overall participant experience with the NDIA. From NSW TG's perspective, it will alleviate the financial and personal pressure placed on the client to make payments from their own funds while waiting for review of their plan.

30. How long should people have to provide evidence that they need the changes they are requesting in a plan amendment?

This would depend on the urgency of the amendment. If the NDIA has proactive and transparent communication with the participant and/or their family, expectations would be clear. A degree of flexibility would benefit participants to obtain appropriate medical evidence within the agreed time-frames.

31. Are there other situations during the planning cycle where a quicker and easier way to make changes may be necessary?

A draft copy of their plan would allow the participant to read through their plan and make any changes. Flexibility to change a plan even after final sign – off will benefit participants when they have had a sudden change of circumstances which will require them to have additional funding included in their plan.

32. How else could the NDIA improve the process for making changes to a plan?

We have observed that the demands on some participants and their families to provide evidence of disability every twelve months may be unreasonable particularly if there have been no changes to their disability.

It would be helpful if the NDIA could make exceptions for people whose disabilities are complex and will not improve where evidence from specialists has already been provided. We have observed that it places hardship on families/carers to arrange and supply reports to prove that the disability is unchanged. There are instances where NDIS plans may roll over into the following year. There is currently no provision for this in the legislation. It will make the process easier for participants to access continued supports without interruptions and without the need to pay for supports from their personal funds due to their plan ending.

For complex support needs participants funding in Core supports provides some flexible options for increasing or tailoring support to the participant within the term of the plan. A transparent standard of evidence for the NDIA would allow providers to put in place mechanisms for recording or capturing required information on review.

Further Information

I trust that the information contained in this submission assists in the conduct of your review.



Adam Dent
Chief Executive Officer

30 October 2019