

Department of Social Services

Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape

Discussion Paper

Occupational Therapy Australia submission

October 2019

Occupational Therapy Australia (OTA) welcomes this opportunity to provide a written submission to the Department of Social Services' *Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape* discussion paper.

OTA is the professional association and peak representative body for occupational therapists in Australia. As of June 2019, there were more than 21,000 registered occupational therapists working across the government, non-government, private and community sectors in Australia.

Occupational therapists are allied health professionals whose role is to minimise the functional impairment of their clients to enable them to participate in meaningful and productive activities. Occupational therapists particularly work with people with a disability and their families to maximise outcomes in their life domains including daily living, social and community participation, work, learning and relationships.

While OTA has long been a strong supporter of the NDIS, it is fair to say that our members and the participants they serve continue to experience significant challenges and barriers when accessing the scheme.

OTA commends the acknowledgement in the discussion paper that in instances in which "NDIS processes are not effective, timely, and well-understood it particularly impacts key cohorts such as children, people with psychosocial disability, those requiring Specialist Disability Accommodation (SDA) or home modification, and those in need of assistive technology (AT)."

These are particularly salient issues for our members, given the prominent role of occupational therapists in providing supports for clients with psychosocial disabilities, and those with home modification and assistive technology needs. These are quite focussed and often advanced areas of practice in which suitably qualified and experienced occupational therapists deliver services.

Given the need for those accessing the NDIS to be supported by clinically informed procedures and processes, OTA would welcome the NDIA increasing engagement with associations and peak bodies, including OTA.

Possible principles for NDIA service standards

OTA considers all principles proposed to be important, and that *Timely, Expert, Connected, Decisions are made on merit* and *Accessible* principles are of the utmost importance.

Timely

OTA continues to receive mixed reports from members about the timeliness of responses from the NDIA. OTA is particularly concerned by a report that people with progressive neurological conditions

such as Huntington’s Disease or Multiple Sclerosis have waited in excess of six months for responses to assistive technology applications for essential equipment such as a wheelchair. Such equipment is vital to the physical safety, and key to the social participation, of participants with progressive conditions. The timeliness of equipment provision therefore significantly impacts clients’ participation in daily activities. It is imperative the NDIS adopt and observe service standards that ensure the timely delivery of assistive technology. In particular, the service standards’ timeframes need to address the urgency of a given participant’s need, which should be determined by their evolving condition and individual circumstances.

Expert

OTA continues to receive reports from members about inconsistencies in the level of knowledge and experience of NDIS staff with respect to disability and the impact particular disabilities have on people’s function and their ability to participate in meaningful activities.

OTA’s submission to the Australian Parliament’s Joint Standing Committee on the NDIS’ Inquiry into NDIS Planning in September 2019 reflected members’ reports that the experience, expertise and qualifications of NDIS Planners are highly variable. One member stated that attending planning meetings for participants was “like a lottery”, with no certainty as to the Planner’s experience or their capacity to facilitate a positive meeting with satisfactory outcomes; too often, the Planner had insufficient knowledge of the planning process, and little if any understanding of the likely course of a given disability. The variability in the experience, expertise and qualifications of Planners are reflected in plan variability; some participants have high-quality plans and others have plans with fundamental gaps.

There is a flow-on effect when plans do not meet a participant’s needs. Unscheduled plan reviews can be complex and time-consuming, and a source of additional stress for participants, their carers and families. As OTA has repeatedly advised the NDIA, getting plans right in the first instance could save the NDIS hundreds of millions of dollars in the medium to long term.

Expertise is not an attribute that exists separate from evidence-based practice, clinical reasoning, and operational frameworks that support the development and maintenance of expertise. OTA believes there is an obvious need for these principles to inform and underpin the NDIS Service Standards.

OTA recommends that the NDIA increase and enhance its engagement with the allied health professional associations and peak bodies. And it should, as a matter of urgency, reconsider OTA’s offers to help train the NDIA’s Planners and develop evidence-based training resources of ongoing value.

OTA's offer to help train Planners has been repeatedly rebuffed by the NDIA, on the questionable grounds that occupational therapists are somehow "conflicted". Occupational therapists are educated at degree level in the importance and facilitation of participation in everyday occupations and are eminently qualified to recognise the likely progression of disability. As such, occupational therapists are ideally suited to train and encourage newcomers to this often highly complex field. Given many Planners have no experience of disability or disability services, they would surely benefit from such assistance. Thanks to an insular, and at times mistrustful agency, however, occupational therapists willing to help train Planners are currently a wasted resource.

As we have pointed out to the NDIA, this training need not be elaborate or expensive; it could simply take the form of a series of webinars. Now that a new CEO is in place at the NDIA, we will renew our offer to do whatever we can to enhance the knowledge and skills of Planners and thereby expedite the NDIS planning process.

Enhanced collaboration between Planners and allied health professionals would also allow knowledge sharing and improved planning processes. Embedding a 'care-team' approach within the culture of NDIS planning, one that facilitates closer collaboration between Planners and other NDIS provider professionals with respect to individual participants, could improve the planning experience for participants.

Decisions are made on merit

At present there is a lack of transparency around how decisions are made with regard to funding in participant plans. For example, capacity building funding for therapeutic supports can appear to be arbitrary, and provider travel is frequently not considered. A substantial portion of participant funds can be absorbed in travel costs depending on their geographical location.

There also appear to be inconsistencies around decisions as to what an appropriate support for a participant might be. For example, some Planners may deem certain creative art therapy interventions to be valid and evidence-based, and build funding for these supports into plans, whereas other Planners may not consider them valid or evidence-based and exclude them from plans. Greater consistency around the types of evidence-based supports that are approved for NDIS participants would be beneficial, as would clear guidelines as to the level of detail and evidence required when providing clinical justification for recommended supports.

Assistive technology appears to be an area in which inconsistent planning practices are also evident. Ready access to clinical advice on appropriate assistive technology options for Planners would enhance consistency of decision making around reasonable and necessary AT supports. Again, increased engagement with professional associations and peak bodies would assist the NDIA to develop clinically informed processes and procedures to support decision making within the Scheme.

Connected

OTA believes participants would benefit from the proposed “Connected” principle. In order for participants to receive clinically appropriate therapy services, at the times and in the places that they need them, it is important for the NDIA to work well with providers, with services such as health, education and justice, with representative bodies, and with government.

Connection and cooperation between the NDIA and other interested entities are necessary to facilitate NDIS accessibility for those participants who receive services from multiple government agencies. For instance, a NDIS participant may also be a Department of Housing tenant or a high school student. The principle of connectedness in these settings is closely related to the proposed “Accessible” principle. Government agencies must work cooperatively to facilitate participant access and minimise the potential for participants to fall through gaps between agencies’ services. The health and care landscape is particularly complex at present, with multiple providers and agencies often involved with each person/family, and this can too easily give rise to poor communication and oversights.

Further consideration should be given by government to the development of dedicated units to manage the interface between the NDIA and government agencies which deliver other key services to NDIS participants. This would at once address the principles of connectedness and accessibility.

Accessible

OTA reiterates its concern, raised in a letter to the Joint Standing Committee on the National Disability Insurance Scheme in February 2019, that costs associated with the necessary assessments and reports when potential participants are seeking access to the Scheme is a barrier to accessibility. Medicare rebates may not be sufficient to cover the cost of assessments required to establish eligibility, and not all those seeking to establish eligibility can afford the costs associated with obtaining the assessments and reports required. The current Medicare rebate for up to five allied health sessions per year is often not adequate for an occupational therapy functional assessment and report, a type of assessment those seeking to establish eligibility may require. This means that a potential participant is denied access to a Scheme for which they might otherwise be eligible. To address this barrier, the Australian Government should give consideration to providing free or substantially subsidised initial assessments undertaken for the purpose of establishing eligibility.

Cultural safety and inclusivity are important considerations at each stage of a participant’s interaction with the Scheme, and are factors impacting accessibility. Some OTA members report that in their experience of working with Aboriginal communities, some Aboriginal people may feel the access process is invasive of their privacy, or do not understand the need for extensive details about their life to be provided and continuously assessed. Further, some may be concerned as to who has access to the information they provide, and what happens with this information. For others, once

NDIS eligibility has been established, they may still encounter problems with regard to the sort of documentation required, such as a driver's licence or birth certificate.

It is paramount that the Scheme give due consideration to participants' cultural safety when delivering services, and increase engagement with Aboriginal and Torres Strait Islander communities to understand how the experience of Aboriginal and Torres Strait Islander persons in accessing the NDIS might be improved.

In addition, OTA members report concerns around the accessibility of the scheme to those who speak English as a second language or with less developed literacy skills, or those who have experienced social deprivation. A scheme such as the NDIS, despite its good intentions, does rely on consumers being "health literate" and being able to advocate effectively for themselves. Improvements to the Scheme's accessibility, to assist all sectors of the community, would be welcomed by OTA.

NDIA Service Standards

The NDIA should consider how the use of shared tools to guide decision-making could be incorporated into the Service Standards. The use of shared decision-making tools could enable more efficient, streamlined and clinically informed decision making.

These tools could facilitate triage, prioritisation, risk assessment and communication between NDIS service providers, participants, carers and families. For instance, these tools could be used to screen for progressive conditions, functional decline or the likelihood of falls, and could assist with ensuring communication about urgent participant needs based on specified criteria. Tools could be linked to timeframes for responses based on urgency, such that each level of urgency could be associated with an appropriate and relevant response timeframe.

The availability of a clinical advisor at NDIS with whom providers could discuss assistive technology and home modification solutions for a participant prior to submitting applications, could promote timely and expert processes.

Participant Pathway

Participants, particularly those who are developing their first plan, may be unaware of supports that could potentially assist them to achieve their goals. It would therefore be beneficial for participants to be provided with clear and informative written material about potential supports, including allied health supports. This material should be in Easy English, a range of languages, and in graphic form.

Some participants have had the number of hours allocated to capacity building supports reduced in subsequent plans, without clear information as to the reasons for this decision. OTA is concerned that these reductions may be based on an assumption that clients have less need for capacity

building supports as a consequence of the support having been provided in their previous plan. While for some participants this may be the case, it is essential that decision making about hours allocated in participant plans reflect actual participant need rather than assumptions about supposed progress over time. It is also important that the Scheme recognise that participant need can change and fluctuate over time.

Communication presents a further challenge for NDIS participants in the plan review process. In the case of unplanned reviews, communication with providers often does not allow enough time for them to prepare the necessary reports to inform the review; and insufficient supporting documentation at the time of review can lead to suboptimal outcomes for participants. In cases where it is identified that additional information is required to clarify participant circumstances and needs, the participant and service providers should be informed so that this information can be provided. This would facilitate the creation of a plan that fully reflects the participant's needs and would minimise the number of additional reviews required.

Clear and timely communication with participants, carers, family members and providers about when review meetings will happen and what information is needed for a review meeting would facilitate an informed and positive plan review experience for participants, as well as setting clear expectations around the timing of interim reports. The process for setting a date for the next plan review should be standardised for all participants, with room for flexibility. Setting the plan review date should occur when a new plan is made, and ideally the date should be set for just under twelve months from the date of the new plan.

Appealing a decision by the NDIA

OTA members report that participants do not always receive a response to requests made to the NDIA in writing, and as a result may be unaware of the process to follow when appealing a decision.

Often clients are being notified over the phone in response to a request, and at times service providers receive no communication about a decline or approval of their recommendations. This adds further complexity to a participant's case, creating unnecessary work for carers, family members and providers. If recommendations that have been made by a service provider are declined, this should be immediately communicated to the service provider, participant, carers and/or family members to enable all interested parties to understand the reason for the decision made, and the process to follow if they wish to appeal it.

Access request process

OTA is aware that individuals with psychosocial disability are both less likely to attempt to access, or be granted access to, the Scheme than individuals with other disabilities. Section 24 of the *National Disability Insurance Scheme Act 2013* outlines the disability requirements for access. Significantly,

the requirements outlined in Section 24 C describe domains highly relevant to psychosocial disability:

“the impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking, one or more of the following activities: (i) communication; (ii) social interaction; (iii) learning; (iv) mobility; (v) self-care; (vi) self-management; and (d) the impairment or impairments affect the person’s capacity for social and economic participation.”

Impairment in functional capacity within these domains for individuals with psychosocial disabilities reflects the very reasons a person with psychosocial disability may experience substantial difficulties in seeking access to the Scheme. OTA would support a dedicated review of the legislation aimed at reforming and enhancing the processes by which individuals with psychosocial disabilities can access the Scheme, recognising the unique access challenges experienced by this group.

Reasonable and necessary supports

OTA members report that the definition of reasonable and necessary supports continues to be a source of ambiguity. Participants, carers and families often understand their needs as being reasonable and necessary to them, however others may interpret these as day-to-day living costs unrelated to a participant's support needs. The interpretation of what is considered reasonable and necessary support is reportedly inconsistent between NDIS staff, leading to participant plan differences that are not reflective of individual differences but reflect inconsistencies in the interpretation of what constitutes a reasonable and necessary support. These inconsistencies may be best managed through the availability of enhanced clinical training and the availability of clinical advice and supports for NDIS staff and providers, rather than legislative amendments.

Plan review process

Section 48 (2) of the legislation that guides processes for review of a participant’s plan could be simplified. The specific section is:

“(2) The CEO must decide whether or not to conduct the review within 14 days after receiving the request. If the CEO does not make a decision within that period, he or she is taken to have decided not to conduct the review. Note 1: The period may be extended under National Disability Insurance Scheme rules made under section 204. Note 2: Notice of a decision that the CEO makes, or is taken to have made, must be given because of subsection 100(1), and a decision the CEO is taken to have made will be automatically reviewed because of subsection 100(5).”

The caveat, that if the CEO does not make a decision within the 14 day period it can be assumed it has been decided not to conduct the review, could be removed for the sake of greater clarity and

accountability. An amended section could state that the CEO must decide whether or not to conduct the review of a participant's plan, or to extend the period of decision-making about whether to conduct the review. The section should specify that regardless of the type of decision made by the CEO in the timeframe, notice of the decision must be provided to participants within a reasonable period following the expiration of the timeframe. OTA would consider that a reasonable period for the dissemination of notice to a participant about the decision taken by the CEO would not exceed 14 days beyond the expiration of the timeframe.

With respect to two specific questions in the Department's Discussion Paper, OTA provides the following comments.

Q16. What are some of the significant challenges faced by NDIS participants in using the supports in their plan?

There is often inadequate understanding of what each support category means. Those who do not have a support coordinator and rely on a LAC to help them implement their plan, often report the LAC does not have adequate time to ensure the participant fully understands and is able to implement their plan.

Thin markets remain a serious obstacle to the success of the Scheme. Too often, participants who live in rural and remote areas do not have access to providers in their area.

Some participant plans are poorly designed with regard to core consumables funding. At times this funding is included in the plan as 'agency managed', meaning the participant can only access AT through registered providers. Other participants have their consumables funding designated as 'self-managed' even though they may not have the skills to manage this, meaning the funding is not utilised.

Q17. 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 have developed a number of resources to support participants in utilising their plans. Despite this, a significant number of participants continue to be challenged. OTA recommends that the NDIA consider renaming the support categories and line items, making them clearer and more meaningful to participants.

Plan amendments

Participants face significant delays in accessing necessary services, including assistive technology services, if their access to these requires a change to their plan. Participants, and their carers and families, can experience dangerous gaps in service provision and increased stress while waiting for a new plan. Plans that are not made fit for purpose in the first instance can require further

adjustments in a short time frame, leading to increased administrative burden for participants, providers and the NDIS.

Another significant frustration for participants is the requirement that any new plan must involve an update of all service agreements with providers. Even if the plan change is minor, and the only change relevant to a service provider agreement is the new plan date, the participant must re-sign their agreements with all service providers to reflect the new plan dates. If there are errors in the new plan, people may receive multiple plans in the space of just a few weeks, with each edition of the plan requiring re-signed service agreements. This creates needless frustration for participants, and further complicates an inefficient and burdensome administrative system.

OTA supports the introduction of a streamlined process for minor plan amendments. Plans should have the capacity for additional supports to be considered and included via the review and amendment of just a section of the plan.

Conclusion

OTA thanks the Department of Social Services for this opportunity to comment on the *Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape* Discussion Paper, and to suggest ways in which the NDIS experience might be improved. OTA would welcome the NDIA seeking further engagement with associations and peak bodies in the development of Service Standards and a Participant Service Guarantee.