

Tasmanian Government Submission

REVIEW OF THE NATIONAL DISABILITY INSURANCE
SCHEME (NDIS) ACT AND THE NEW NDIS
PARTICIPANT SERVICE GUARANTEE

October 2019

Table of Contents

1. Introduction	2
2. Areas of Relevance	2
2.1 Participant Uptake.....	2
2.2 NDIS Language.....	3
2.3 The objectives and principle of the NDIS Act.....	3
2.4 The experiences of people with disability, their families and carers with the Scheme’s administration and decision–making, including: access, planning, review and appeal processes	3
2.5 The roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services	5
2.6 Current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation (SDA) framework; .	5
2.7 Recommendations agreed by the Council of Australian Governments (COAG) from the 2015 Independent Review of the NDIS Act.	8
3. Conclusion	8

1 INTRODUCTION

The Tasmanian Government welcomes the opportunity to provide a submission to the Review of the National Disability Insurance Scheme (NDIS) Act and the new NDIS Participant Service Guarantee (the Review).

The NDIS is one of the most complex and important reforms that Australia has seen in recent years and its potential to transform the lives of Tasmanians living with disability cannot be overestimated. Successfully transitioning to the NDIS continues to be a key focus for the Tasmanian Government.

From 2013 to 2016, Tasmania was an NDIS trial site for young people in the 15-24 age group and during that time over 1,000 young Tasmanians transitioned into the Scheme. In July 2016, Tasmania commenced its three year transition to full scheme with eligible people entering the scheme by age cohort. Tasmania moved to full scheme NDIS on 1 July 2019 and is now operating under the *Bilateral Agreement between the Commonwealth of Australia and the State of Tasmania on the National Disability Insurance Scheme*. This Agreement reflects the shared NDIS responsibilities of both Governments and locks in arrangements for on-going funding contributions to the Scheme.

The Tasmanian Government notes that the purpose of the Review is to assess the operation of the *NDIS Act 2013* (NDIS Act) with a focus on streamlining NDIS processes and removing red tape for participants and providers. The terms of reference and the accompanying Discussion Paper, *Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape* (the Discussion Paper) are also noted.

This submission does not seek to address each aspect of the terms of reference or to answer all the questions included in the Discussion Paper. Rather, areas of particular relevance to the Tasmanian Government are highlighted as they relate to the Tasmanian experience of the NDIS in the context of the NDIS Act. Responses to the questions in the Discussion Paper can be found in the attachment to this submission.

2 AREAS OF RELEVANCE

2.1 Participant uptake in Tasmania

Tasmania's transitional agreement, the *Bilateral Agreement between the Commonwealth and Tasmania for the transition to an NDIS*, estimated that 10,587 Tasmanians would be supported by the NDIS by 1 July 2019.

As at 30 June 2019, 6,831 Tasmanians were receiving NDIS support. This represents 65 per cent of the Tasmanian Bilateral estimate met for the period 1 July 2013 to 30 June 2019 compared to a national average of 72 per cent.

This slower than expected rate of eligible Tasmanians phasing into the Scheme means that many eligible Tasmanians are not receiving the supports they need, when they need them.

The Tasmanian Government continues to work closely with the National Disability Insurance Agency (NDIA) to maximise participant uptake in Tasmania. This will remain a priority for the Tasmanian Government in the first years of full scheme.

2.2 NDIS Language

As the NDIS Act gave effect to the establishment and implementation of the NDIS, the operational language tends to reflect the legal obligations of the Scheme, resulting in language that is complex, confusing and often not well understood by the people who actually use the Scheme and the broader community.

Consideration should be given to simplifying language across the operational aspects of the scheme. In particular, all NDIA public-facing documents and general communications should translate legislative requirements into ordinary language wherever possible.

2.3 The objectives and principles of the NDIS Act

The Tasmanian Government supports the objectives and principles of the NDIS Act and is not seeking any fundamental change to them through this Review.

2.4 The experiences of people with disability, their families and carers with the Scheme's administration and decision-making, including: access, planning, review and appeal processes

The Tasmanian Government recognises that improved access and planning processes introduced by the National Disability Insurance Agency (NDIA) over the last 18 months have improved the experience of many Tasmanians as they seek to become NDIS participants and navigate their way through the Scheme.

Acknowledging that much of the NDIS planning, review and appeal processes are prescribed in the NDIS Act, the Tasmanian Government provides the following comment in relation to our experience of these processes in Tasmania.

Pre-access and access

The NDIS Act requires that an access request includes all necessary information and supporting documentation to enable the NDIA to make a determination on whether the access criteria have been met.

The access stage can be challenging for applicants for a range of reasons including: a lack of clarity regarding the information required; difficulty obtaining the relevant information, meeting any associated costs (for example any medical assessments and/or reports); and the sometimes lengthy time it takes to gather the information. This is often a stressful time for applicants, their families and carers as they navigate their way through the NDIS. For people presenting with psychosocial disability, this stage can be particularly problematic. This cohort often experience challenges and long delays accessing the NDIS.

Elements of this process could be enhanced by improving pre-access support and looking at the flow of information between the NDIA, the participant and the relevant health or allied

health professional. It is feasible that some information could flow directly between the NDIA and the health or allied health professional to speed up and simplify the access process.

Plan development and activation

The Tasmanian Government notes that for many eligible participants, the NDIS planning process is complex, takes considerable time to navigate and can result in a plan that is not appropriate for their needs. The experience of participants and the quality of plans can vary considerably depending on the skills and experience of the Local Area Coordinators (LACs) and the NDIA planner, the capacity of the participant and the level of support available during the process. Wait times between an access met decision and a plan approval are often unacceptably long leaving many eligible Tasmanians unclear as to what supports they can receive and when they can expect to receive them.

Once a plan is approved, there are often long delays in activating plans. This can occur for a number of reasons including: unavailability of supports in particular locations (i.e. thin markets in regional or remote locations) or unavailable at the time the participant needs them; the capacity of (or adjustment time required for) the participant to use their plan effectively or the level of support participants have access to.

The *COAG Disability Reform Council (DRC) Quarterly Performance Report 30 June 2019* provided by the NDIA (the latest Quarterly Report) shows the delay between a participant's plan approval and plan activation (plan activation is defined as the time from a participant's initial plan approval to when the participant first uses plan supports). In Tasmania, 68 per cent of plans are activated within 30 days of plan approval and 85 per cent within 90 days. This means many participants do not access their approved reasonable and necessary supports for significant periods of time post plan approval.

Unscheduled plan reviews

An unscheduled review can occur for a range of reasons, but often in response to a change in a participant's circumstances. The proportion of unscheduled reviews can be an indicator of the quality and appropriateness of the initial plan. In Tasmania, 20 per cent of participants are likely to have an unscheduled plan review compared to 16 per cent nationally.

Currently, if a participant requires a change to their plan, a plan review is triggered which often includes the development of a new plan. This can be lengthy, causing frustration for the participant, their families and carers. Improvements could be made by introducing the concept of a plan amendment which allows for minor changes without the need for a new plan.

Participant satisfaction

Participant satisfaction surveys developed by the NDIA aim to better record the experience of NDIS participants, their families and carers at different stages of the participant pathway. The latest Quarterly Report shows that 67 per cent of Tasmanian participants rated their overall experience with the NDIA's planning process as either good or very good, compared to 90 per cent nationally. Compared to data from the same time last year (97 per cent as at

30 June 2018) it is evident there has been a substantial decrease in levels of satisfaction with the planning process in Tasmania over the last 12 months.

Further analysis of survey data shows improvements in the area of ‘participant attitude regarding the planner’ but a decrease across all other areas. The data shows only 62 per cent of Tasmanian participants agreed or strongly agreed that “the planner listened to me” and 67 per cent agreed or strongly agreed that their plan will make life better.

Tasmania is performing well in the area of NDIS pre-planning, however performance in some aspects of the planning stage are concerning, particularly in relation to participants understanding what happens next with their plan (only 56 per cent reported they were clear on what happens next in the Planning stage compared to 78 per cent in the Pre-planning stage) and whether participants felt that decisions about their plan were clearly explained (with 63 per cent reporting they were clear in the planning stage compared to 85 per cent in the pre-planning stage).

This may reflect different processes for pre-planning and planning activity. Pre-planning is primarily carried out by Local Area Coordinators (LACs) with planning undertaken by NDIA planners. It is possible LACs and NDIS planners have a different approach and/or skillset which results in different experiences and outcomes for participants across the stages.

Administrative Appeals Tribunal

The Administrative Appeals Tribunal (AAT) reviews administrative decisions made by the NDIA. The latest Quarterly Report shows there are 2,233 NDIS related AAT cases nationally, of which 31 are Tasmanian cases. Data suggests that the planning and review processes generate a higher percentage of AAT cases nationally. Potentially, this indicates a level of dissatisfaction with the planning process consistent with participant experience in Tasmania.

Progression of national work

The Tasmanian Government recognises the work progressing at a national level through the Council of Australian Governments Disability Reform Council (DRC) and its supporting senior officials’ group. Further development of national policy and ongoing improvements, particularly in relation to NDIA access, planning, review and appeal processes are welcome.

Data-sharing

The Tasmanian Government notes the importance of ongoing, relevant data-sharing and reporting arrangements with the NDIA and would like to see these arrangements continue.

2.5 The roles and responsibilities of the Commonwealth and state and territory governments to support people with disability in their interaction with the NDIS, including advocacy, information and referral services

With the exception of advocacy services, the Tasmanian Government has redirected funding previously allocated to state-funded information and referral services to the NDIS as part of

its financial contribution. This was agreed as part of the Tasmanian Government 2019-20 budget process in anticipation of services being able to seek funding through the NDIA's Information, Linkages and Capacity Building (ILC) Investment Strategy.

Tasmania is yet to realise a complementary and supporting ILC service system as originally envisaged by the Productivity Commission. While this part of the NDIS system remains immature and underdeveloped, NDIS participants and people with disability remaining outside the Scheme will not achieve the full benefits of the intention of the NDIS.

In response to NDIA delays in the roll-out of ILC nationally, the Tasmanian Government has extended funding to affected organisations to enable them to continue delivering ILC-type services (including information and referral services) up to 31 March 2020. Organisations and the broader community sector continue to raise ILC as an issue, highlighting the negative impact these delays and uncertainties are having on the people who use their services.

The Tasmanian Government will continue to raise ILC as an issue with the NDIA and would welcome a review to assess its effectiveness in enabling people with disability to live more accessible and connected lives.

Other key areas of concern for the Tasmanian Government in regard to roles and responsibilities of the Commonwealth and state and territory governments are early childhood intervention and transport.

The NDIS Early Childhood Early Intervention (ECEI) program began in Tasmania on 1 July 2017 and currently runs alongside the Tasmanian Government's Early Childhood Intervention Service (ECIS), which is yet to be cashed out. Tasmania's Department of Education continues to build collaborative relationships with ECEI providers to support good outcomes for children in the State. As at 30 June 2019, 232 Tasmanian children were accessing ECEI supports.

Earlier this year, several short-term measures were announced to resolve delays in accessing ECEI supports, including the option of a six month plan for those families who have been waiting 50 days or longer. These measures should be rolled-out in Tasmania as soon as possible in order to reduce waiting times for Tasmanian families and carers of children accessing ECEI supports.

Access to transport is critical in enabling Tasmanian participants to access their communities and to live an ordinary life. The NDIS provides reasonable and necessary transport supports based on an individual's assessment of need. The NDIS assessment of need in relation to transport supports has, for many Tasmanian participants, resulted in a reduced capacity to travel to work or place of study, to access funded supports and to participate in community events or recreational activities. This has greatly affected participants' quality of life and has been the cause of significant dissatisfaction both within the Tasmanian disability sector and the broader community in Tasmania.

The Tasmanian Government suggests that NDIS transport funding supports be included in participant plans that: are consistent with the Applied Principles and Tables of Support

(APTOS); adequately reflect participant transport support needs; do not reduce participants' existing capacity to travel; and enable state transport subsidies for NDIS participants to cease.

In March 2019 the Tasmanian Government endorsed continuation of a State-funded tax subsidy in the form of a capped, time-limited (up to December 2023) Taxi Supplement to assist NDIS participants with transport costs until a national NDIS Transport policy is finalised.

2.6 Current NDIA operational reforms including the rollout and implementation of new NDIS participant planning pathways and reforms to the Specialist Disability Accommodation (SDA) framework

NDIA operational reforms and improved access and planning pathways introduced earlier in 2019 are both noted and appreciated by the Tasmanian Government. However, there is still more to be done to ensure eligible Tasmanians receive the supports and services they need when they need them.

Psychosocial disability service stream

The NDIA's capacity to respond to people presenting with psychosocial disability is an area of concern for Tasmania. The Tasmanian Government notes that nationally, higher than expected numbers of people with psychosocial disability are assessed as ineligible for the Scheme. This cohort often require considerable pre-access support and support coordination to help facilitate successful access requests through to plan activation. In Tasmania, the support coordination market is still developing and does not yet adequately meet the needs of this cohort.

The capacity of NDIA planners to respond to people with complex needs should be more agile and flexible to address participants' short-term needs as well as plan to meet medium and longer term goals. As this cohort often experience challenges and long delays accessing the NDIS, good outcomes in the planning stage are critical for their long-term success in accessing appropriate services and reaching goals.

The Tasmanian Government acknowledges and welcomes the introduction of the psychosocial disability service stream and has seen considerable improvements in access for this cohort. Tasmania is participating in the work currently being progressed at a national level through DRC Senior Officials Working Group (SOWG) and looks forward to further improvements, particularly in relation to recognition of the episodic nature of psychosocial disability and the focus on recovery-based support.

Complex Needs Support Pathway

The NDIA's Complex Supports Needs Pathway, which commenced roll-out nationally in March 2019, provides specialised support for people with a greater need for coordination of multiple services to access and engage with the NDIS. This approach is strongly supported by

the Tasmanian Government and we look forward to seeing a positive impact for Tasmanians with complex support needs through this Pathway.

The Tasmanian Government has identified areas for improvement in relation to NDIA planners' ability to understand and address complex needs, particularly where the participant is

- in a custodial setting;
- a young person living in residential aged care;
- a child who is unable to remain living in the family home due to the impact of their disability; or
- an inpatient of a hospital facility.

In the above scenarios, the planning process could work better for participants if specialist planners (preferably with relevant qualifications to the setting) were available and allocated to the participant with complex needs. This could also assist with interpretation and understanding of specialist and/or clinical language across the NDIS and mainstream interfaces to reduce confusion and provide greater clarity for the participant, their family and carers and the planner.

In the case of Tasmanian participants in hospital, the introduction of interim plans and the early involvement of a coordinator of supports have generally been positive, although this has sometimes led to delays. A plan review generally occurs six months after the interim plan. This can create challenges, as it is often the expectation of the coordinator of supports that the participant will remain in hospital until their plan review occurs leading to discharge delay.

The Tasmanian Government notes there are financial implications for state public health systems in providing ongoing care to NDIS participants who experience delays in discharge, which result in increased avoidable costs to the health system. This is often the case for participants who might require support from multiple service systems such as clinical, accommodation, and mental health supports. Improvements are expected through the Complex Needs Support Pathway and the *Hospital Discharge Delay Action Plan*.

The Tasmanian Government notes the recent implementation of the Critical Services Issues Response (CSIR), a process for escalating complicated and intractable matters that impact on an NDIS participant and cannot be resolved at the local level. This has enabled a more consistent and rapid response from the NDIA with improved outcomes for participants.

The Tasmanian Government is participating in work at a national level through SOWG in relation to people in custodial settings, the *Hospital Discharge Delay Action Plan*, the plan for Young People Living in Residential Aged Care and children who are unable to remain living at home due to the impact of their disability.

Reforms to the Specialist Disability Accommodation (SDA) Framework

The Tasmanian Government supports the proposed reforms to the SDA Framework and Rules as recommended in the KPMG *SDA Pricing and Payments Framework Review* December 2018.

Further discussions on participants who wish to be SDA providers for their own dwelling are ongoing.

2.7 Recommendations agreed by the Council of Australian Governments (COAG) from the 2015 Independent Review of the NDIS Act

The Tasmanian Government notes the recommendations agreed by COAG as part of the 2015 Independent Review of the NDIS Act were not fully implemented and suggests they be revisited as part of this Review to ensure they still achieve the intended outcomes.

3. CONCLUSION

The number of Tasmanians receiving NDIS support is below the national average which means many eligible Tasmanians are not receiving the supports they need, when they need them.

All eligible Tasmanians should be able to expect: to receive NDIS decisions in a timely manner and receive high-quality NDIS supports; to feel engaged and valued; to have access to NDIA planners and staff with the appropriate skills and expertise to build quality plans; and to feel confident that any decisions that affect them are transparent and made on merit.

The Tasmanian Government supports this Review, including the introduction of a Participant Service Guarantee that sets new standards and legislates timeframes across key steps in the NDIS process that improve the overall NDIS experience for participants, their families and carers. Providing more transparency and certainty for participants through a Guarantee should lead to shorter, agreed timeframes for people to: receive their access decision; have their NDIS plan approved and to start receiving their approved supports to enable them to achieve their goals. In supporting legislated timeframes, the Tasmanian Government makes it clear that shorter, agreed timeframes should not compromise the quality of NDIA decisions, or the participants plan or the supports participants receive.

Attachment: Review of the NDIS Act and NDIS Rules – Response to questions in the Discussion Paper: *Improving the NDIS Experience: Establishing a Participant Service Guarantee and removing legislative red tape*

