



Australian Government

National Mental Health Commission

NDIS Consultations
Department of Social Services
GPO Box 9820
Canberra ACT 2601

Re: Submission to the 2019 review of the NDIS Act and the new NDIS Participant Service Guarantee

To Whom It May Concern

Thank you for the opportunity to make a submission to the 2019 review of the NDIS Act and the new NDIS Participant Service Guarantee.

Please find attached the submission from the National Mental Health Commission to the inquiry. There is no confidential information presented.

Should you require clarification, or would like to discuss this submission in further detail, please contact Ms Sandra Ofei-Ferri at sandra.ofei-ferri@mentalhealthcommission.gov.au or on (02) 6289 5056.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Christine Morgan'.

Christine Morgan
Chief Executive Officer
Commissioner

04 NOV 2019

Encl.
Attachment A.



National Mental Health Commission: Submission to the 2019 review of the NDIS Act and the new NDIS Participant Service Guarantee

The National Mental Health Commission (NMHC), established in 2012, has a national remit to provide insight, advice and evidence on ways to continuously improve Australia's mental health and suicide prevention system, and act as a catalyst for change to achieve these improvements. The NMHC takes a broad approach to assess the impact of mental health on individuals by looking at the social determinants of mental health which include education, housing, employment, justice, human services and social support. There are three main strands to the NMHC work: monitoring and reporting on Australia's mental health and suicide prevention systems; providing independent advice to government and the community; and acting as a catalyst for change.

The NMHC welcomes the review of the NDIS Act and the development of a new Participant Service Guarantee. The review provides an opportunity to address issues arising from the interpretation of the permanency requirement and psychosocial disability in the NDIS Act and Rules that continue to affect the NDIS participant experience for people with psychosocial disability. The NMHC notes that this review complements work currently underway by the NDIA to improve the NDIS experiences of people with psychosocial disability. This includes the recent commitment by the Council of Australian Governments (COAG) Disability Reform Council to work together to improve access and experiences for participants with psychosocial disability in the NDIS, and to address interface issues between the NDIS and mainstream mental health systems.¹ Many of these initiatives are consistent with NMHC recommendations made in the report *Monitoring mental health and suicide prevention reform: National Report 2019*:

- **Recommendation 17:** The NDIA publishes information about the outcomes of the complex support needs pathway and the psychosocial disability service stream, and the evaluation outcomes of streamlined access for people with psychosocial disability.
- **Recommendation 18:** The Australian Government: extends support for Commonwealth community mental health program clients to at least June 2021; considers whether the funding available under the National Psychosocial Support and Continuity of Support measures matches the needs of people who are ineligible for the NDIS; and considers how funding and access to services for people ineligible for the NDIS can be simplified.
- **Recommendation 19:** The Australian Government, with state and territory governments ensure that people who are ineligible for the NDIS have access to adequate psychosocial support services.
- **Recommendation 20:** The NDIA works with state and territory governments to progress the Maintain Critical Supports policy and release detail on what is happening with the policy.
- **Recommendation 21:** The NDIA includes support coordination as a standard item in all plans for people with psychosocial disability.
- **Recommendation 22:** The NDIA routinely publishes data about participants with psychosocial disability including information about application, access and planning outcomes by population groups, eligible/ineligible status, plan utilisation, the extent of support coordination in plans, and current rates of expenditure on supports in plans.²

This submission provides a high-level overview of issues affecting people with psychosocial disability as they navigate through the NDIS. The overall design of the proposed Service Guarantee and Service Standards is discussed with a specific focus on how the Service Guarantee and Standards may be developed to improve the NDIS processes for people with psychosocial disability, including addressing legislative concerns for people with psychosocial disability. Specific comments about the *Potential ideas for Participant Service Guarantee Standards* are presented in Attachment A.

NDIS participant experience for people with psychosocial disability

Access process

People with psychosocial disability report significant barriers to applying for and accessing the NDIS. Issues affecting participants during the application and access process include a lack of understanding about psychosocial disability, and how the episodic nature of mental illness and the recovery approach align with the NDIS assessment process.^{3,4} Recent data shows that as at 30 June 2019, 33% of people with psychosocial disability had been assessed as not meeting access requirements for the NDIS.⁵ Most of this group (94%) were found ineligible because they did not meet the disability criteria.

It is not clear exactly what is driving the high rates of applicants being found ineligible. Past reviews suggest that likely factors include a lack of clarity around criteria and guidelines for assessing people with psychosocial disability, a lack of understanding around what 'permanent impairment' means in the context of psychosocial disability, an overreliance on a diagnostic approach, and inconsistent approaches to the interpretation of permanency under the NDIS Act and Rules.⁶ The NDIA recently noted that a higher proportion of people with psychosocial disability who have received services from existing government programs were more likely to meet the access requirement than those who were new to the NDIS.⁵ It is possible that people who have already accessed psychosocial support services are more likely to receive additional support from these services to navigate the NDIS application process and other interactions with the scheme.

People with psychosocial disability have severe and complex needs, ranging across many areas of their lives. They can also be more difficult to reach than other disability cohorts, including but not limited to those living in rural and remote locations. The nature of severe and complex mental illness means that people with psychosocial disability require additional support to navigate the NDIS, including during the application process. The NMHC considers that the NDIS access process can be improved by providing additional support to people with psychosocial disability during the pre-access stage, regardless of whether they have previously received services from existing government programs.

Recommendation 1: Participants with psychosocial disability should receive support during the NDIS pre-access stage to navigate and apply for the scheme.

Planning and review process

While some participants with a psychosocial disability receive appropriate support, NDIS planning continues to be an area of concern for many participants. Key issues identified include:

- Planning outcomes are inconsistent, with similar participants receiving different access decisions, review decisions, or different levels of funding.^{3,7,8}
- Family, carers, and health professionals are often not included in the planning process.⁷⁻⁹
- Plans and plan reviews are inflexible and do not account for the episodic nature of psychosocial disability.^{3,7,9}
- Plans are inappropriate for people with psychosocial disability, with insufficient funding allocated to capacity building.^{3,7}
- Inappropriate plans compound issues faced by participants, as once they have a plan they can no longer access state and territory services.⁷
- People with psychosocial disability are more likely to require additional assistance to manage and implement their plans.⁸⁻¹¹

- People with psychosocial disability are less likely to use the funding in their plans because they receive insufficient support to access services, or because they do not understand how to access support.^{8,9}

The NDIS planning and review process may be improved by ensuring that those working with NDIS participants with psychosocial disability have sufficient knowledge of the condition to ensure that plans are responsive to the episodic nature of mental illness. It is also important that NDIS participants with psychosocial disability have access to appropriate support during the planning and review process, and that current and accurate data about participant experiences are used to inform improvements to the planning and review process. The NMHC acknowledges that current initiatives by the NDIA to improve participant experiences are aimed at addressing a number of these issues. This includes implementing psychosocial disability training for NDIA staff, training for health professionals including general practitioners and psychiatrists, rolling out the complex support needs pathway, implementing service improvements to the psychosocial disability service stream, and the inclusion of recovery-oriented practice into the scheme.^{1,10}

Overall design of the NDIS Service Guarantee and Service Standards

The NMHC supports a rights-based approach to the NDIS Service Guarantee and Service Standards. It is important that the Service Guarantee and Service Standards reflect a balance between the NDIS establishing a market for the supply of disability support services, and upholding the human rights and dignity of people with disability. The NMHC suggests the proposed Service Guarantee and Service Standards include a preamble which:

- reflects the need to uphold the rights of individuals with a disability
- acknowledges the multiple roles of the NDIA as funder, price regulator and decision-making body for access into the scheme
- reflects that the administration of the NDIS does not detract from the mental health and wellbeing of participants.

The preamble could be based on the UN Convention into the Rights of Persons with Disabilities and the UN Principles for the Protection of Persons with Mental Illness.^{12,13}

Recommendation 2: The NDIS Service Guarantee and Service Standards should include a preamble highlighting the rights of the individuals with a disability.

Specific service standards for participants with psychosocial disability

In addition to general service standards for all NDIS participants, the NMHC supports the inclusion of specific service standards for people with psychosocial disability. It is important that standards are flexible and responsive to individual circumstances and capacities, including changes in participants' circumstances and capacities that arise from the episodic nature of psychosocial disability. Specific needs of people with psychosocial disability that should be considered in the development of the Service Standards include:

- flexible and responsive timeframes in the NDIS processes
- access to specialised, skilled and experienced professional staff
- consistent approach to assessing applicants during the NDIS access process, demonstrating a professional understanding of psychosocial disability and the skills required to make an accurate assessment of functionality, impairment and need
- access to and participation in the access and planning process by carers and families
- a capacity to provide information in different modes to enhance comprehension and clarity, including clear English

- opportunities to clarify and ask questions, and to seek advice.

Recommendation 3: In addition to generic service standards, the NDIS Service Standards should include specific standards for people with psychosocial disability which are flexible and responsive to the needs of participants.

Timeframes in the NDIS Service Guarantee and Service Standards should be flexible

The NMHC acknowledges that meeting timeframes is an important dimension of service quality, but there are risks associated with an over-emphasis on timeliness, including creating unintended incentives for service delivery staff to prioritise meeting targets over effectively addressing the needs of participants. Navigating the NDIS system can be a stressful and at times traumatising experience for people with psychosocial disability, who require sufficient time to make decisions during the various stages of the NDIS process.

Recommendation 4: Timeframes in the NDIS Service Standards should be flexible to allow for circumstances where it would be in the participant's best interest to extend the time required to progress through the various stages of the NDIS access, planning or review process.

Standards, measurement and performance

The NMHC supports the goal of making the Service Standards measurable, but acknowledges the following limitations and risks of such measurement:

- It is not possible to directly measure every aspect of a complex interaction with a system like the NDIS and as such, any measurement can only be indicative of performance.
- Assessing interactions that are fundamentally qualitative and subjective in nature requires appropriate measurement tools, such as participant experience surveys, appeals or complaints, and exit rates.
- Qualitative measures are indicators of the 'health' of the relationship, and should only be used to draw attention to areas where there might be a need for further examination and action.
- Measurements (especially those related to timeliness) create incentives to meet targets, and this may shift the focus away from meeting specific needs of individual participants.

It is important that the NDIS Service Guarantee and Service Standards address risks and limitations of the measurement and performance of standards by clearly defining the role of performance measures as indicators of trends and patterns. NMHC comments on specific service standards are presented in Attachment A.

Recommendation 5: The measurement of performance against the NDIS Service Standards should be clearly articulated as indicative of system performance only, and not as goals or targets for individual officers or specific cases.

Recommendation 6: The NDIS Service Guarantee and Service Standards should be used only as a benchmark or guide for determining whether participants have received a reasonable level of service from the NDIA.

Consequences, assessment and evaluation

The NMHC considers that the NDIS Service Guarantee should be used as a guide for assessing whether an individual participant has received a level and quality of service that corresponds with what could be reasonably expected, given their circumstances. In other words, the Service

Guarantee should supplement and inform (rather than replace) existing avenues of complaint or appeal.

It is neither realistic nor desirable for the NDIA to be subject to direct sanctions as an organisation for failing to meet its Service Guarantee obligations. Any sanctions beyond what is already available in administrative and common law would likely be counterproductive, or could undermine the efficacy of administrative law as it relates to the NDIS. However, it is important that the NDIA's overall performance against the NDIS Service Guarantee is independently assessed and publicly reported on from time to time, possibly on a biennial or annual basis.

Recommendation 7: The NDIS Service Guarantee should supplement and inform existing avenues of complaint or appeal about the provision of services under the NDIS.

Recommendation 8: An independent organisation (such as the NDIS Quality & Safeguards Commission) should be tasked with assessing and publicly reporting on the overall performance of the NDIS against the NDIS Service Guarantee. This should be done on either a biennial or annual basis.

There also needs to be a clear and publicly known future program of evaluations of the NDIS. It is currently not clear whether or when the next evaluation of the scheme is expected to take place. The last evaluation that the NMHC is aware of is the evaluation of trial sites conducted by Flinders University.¹⁴ This evaluation found that people with psychosocial disability reported overall lower levels of satisfaction with the quality of their supports and higher rates of ineligibility and consequently lower levels of NDIS participation. Other barriers reported included the language of permanent disability used in the NDIS and the capacity of people with a psychosocial disability to navigate the NDIS processes effectively. This type of information is useful for understanding how the NDIS is meeting the service needs of participants. As such, a comprehensive evaluation of the NDIS at full operation is needed to understand the effectiveness of the scheme, including how the NDIA is meeting the proposed Service Guarantee and Service Standards.

Recommendation 9: A comprehensive evaluation, drawing on the evaluation undertaken of the trial phase of the NDIS as a base-line, should be undertaken within the first five years of the Scheme. The evaluation should also be framed around the proposed Service Guarantee.

Legislative concerns for people with psychosocial disability

The NMHC considers that the access requirement of permanency and the definition of psychosocial disability in the NDIS legislation underpin a number of the challenges the NDIA faces in dealing fairly and effectively with this cohort, and in ensuring the NDIS is as effective as possible in addressing the impact of psychosocial disability.

In order to be eligible for the NDIS, an individual must demonstrate that they have a permanent impairment or an impairment that is likely to be permanent. This criteria is inconsistent with the recovery focus of mental illness or the episodic nature of psychosocial disability—a condition that fluctuates in severity and impact over time in different ways for different people.¹⁵ The NMHC has previously recommended in its 2014 Review that the government clarify the eligibility criteria for access to the NDIS.¹⁶ The issue of psychosocial disability as a permanent disability has also been considered by the Joint Standing Committee on the NDIS. Evidence presented to the committee highlighted additional barriers arising from the legislation including:

- People not engaging with the scheme because of the permanency requirement and how mental illness is defined by the NDIS.
- Difficulty for young people to get a diagnosis from medical professionals that states that their psychiatric condition is permanent or likely to be permanent.

- The inclusion of the term ‘psychiatric condition’ in sections 24 and 25 of the NDIS Act implies eligibility is determined by a formal diagnosis, rather than an assessment of the physical and psychosocial impact of psychosocial disability and need for support.¹⁵

The NMHC acknowledges efforts by the NDIA to reconcile the concept of ‘permanent or likely to be’ with the fact that mental illness is often highly episodic and fluctuating in intensity and impact.¹⁷ However, specific changes to the NDIS Act and Rules are required to better accommodate the episodic nature of mental illness and psychosocial disability.

Recommendation 10: The NDIS legislation should be amended to remove the reference to psychiatric conditions in sections 24 and 25 of the NDIS Act, and the NDIS Rules modified to reflect that the requirement for a condition to be permanent (or likely to be permanent) does not apply to psychosocial disability.

References

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